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Judiciary Committee
February 01, 2007

[LB137 LB152 LB220 LB384 LB586 LB618 LB619 LB620]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 1, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska for the purpose of conducting a hearing on LB137, LB152, LB586, LB384, LB220, LB618, LB619, and LB620. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: Good afternoon. Welcome to the Judiciary Committee. My name is Brad Ashford. I'm from Omaha and I'm the Chairman of the committee. Senator Pedersen from Elkhorn is here; Senator Amanda McGill from Lincoln; introduced Senator McDonald and Senator Lathrop from Omaha; Senator Schimek from Lincoln. We would ask you all to sign in and maybe of you probably already have prior to coming up to testify. We have a bit of a light system that gives you all a warning when there is a minute left to go in your time, and you generally have around three minutes if you would try to get your testimony in, in three minutes. You don't have to stop when the red light comes on if you are in midsentence, but try to finish the paragraph anyway and we'll move from there. How many...? Let's see, we have a number of bills today. LB137. How many are here to testify on LB137? Okay. Senator Flood is here, his representative. Okay, why don't we start with LB137.

DENISE PEARCE: Good afternoon, Chairman Ashford and members of the committee. My name is Denise Pearce, P-e-a-r-c-e, and I work for Senator Mike Flood who represents District 19. He is unable to be here this afternoon so I am here on his behalf to introduce LB137. This bill came about as a result of a Nebraska Supreme Court decision that was issued last summer. In In re estate of Hazel Reed, the court essentially concluded that there was no time limitation on a county's ability to collect the inheritance tax due on property subject to that tax. In Reed, the decedent Hazel Reed had died on August 17, 1992. Her daughter who is also the sole devisee under Reed's will did not file an application for informal probate until November 7, 2002, more than ten years later. The daughter apparently believed that her mother did not own any property requiring probate, but she was ultimately proved wrong when she discovered her safety deposit box holding stocks, bonds, CDs and other property totalling almost \$220,000. In concluding that no inheritance tax was due, the county court in Reed looked to Section 77-2037 of our code. This provision currently provides, in part, that an inheritance tax lien will expire ten years after the decedent dies unless a determination of the tax due has been made by that time. Lancaster County appealed the county court's decision, arguing that the court should have looked to Section 77-2003 which relates to the inheritance tax liability itself and does not include a time limitation. The Supreme Court agreed with Lancaster County and remanded the case for a further determination of the amount of tax due. In reaching its decision, the Supreme Court first looked to Section 77-2003 which provides in part that the personal representatives and other recipients of

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property subject to the inheritance tax, quote, shall be liable for any and all such taxes until the same shall have been paid as here and after directed, unquote. Section 77-2003 goes on to say that, quote, this tax shall be a lien on the real property subject thereto until paid or otherwise terminated pursuant to Section 77-2037 with some exceptions. After reviewing this "shall be liable" language, the court then looked to 77-2003, the statute that Senator Flood is amending on pages 2 extended to page 4 of the green copy. The court concluded that this statute as currently written does not relate to the inheritance tax liability of personal representatives or recipients of property. It simply sets forth when the lien on the real property subject to the tax expires. Thus, after Reed, it is clear that there is no statute of limitations that applies when counties seek to collect the inheritance tax on property subject to that tax. After conversations with several members of the bar who practice in the area of probate law, Senator Flood concluded that a statute of limitations was indeed necessary. He therefore now offers LB137 which does the following: In Section 1, it amends Section 77-2003 to clarify that the inheritance tax liability itself terminates with the new language that he sets forth in Section 2 of the bill. And then in Section 2, LB137 does two things: It amends the lien termination language and then it includes new language that specifically terminates the inheritance tax liability itself. And with that I know my time is going to be running short here, so Senator Flood has asked Mr. Bill Lindsay, one of the probate attorneys with whom he has been working, to discuss LB137 in a little more detail. Thank you for your time. I'd be happy to try to answer any questions if I can. [LB137]

SENATOR ASHFORD: Thank you, Denise. Any questions of Denise? Thank you. Bill. [LB137]

WILLIAM J. LINDSAY JR.: Chairman Ashford, members of the committee, my name is William J. Lindsay Jr., L-i-n-d-s-a-y. I practice law in Omaha with the law firm of Gross and Welch. I've been practicing law for about 28 years. I started in practice with my father, William Lindsay Sr., and so I can testify a little bit about the historical background as far as what attorneys have thought. The attorneys have generally thought that there was a ten-year statute of limitations both on a lien for inheritance tax and on personal liability. A lien is similar to an involuntary mortgage on property. The Nebraska Supreme Court decision came as quite a surprise to us. I know personally I have always been under the impression that the statute of limitations was the ten-year statute of limitations, and my father did as well. My father started practicing law in 1947. The Nebraska inheritance tax applies to people at all levels of economic society. The inheritance tax starts with somebody who receives an inheritance tax for a child, for example, at \$10,000; for a niece or a nephew, at \$2,000; and then for somebody unrelated, at \$500. So it is something that's important. This inheritance tax also bears a 14 percent interest rate, so that tends to add to the problem. In the bill the limitation is what we always expected. That's what we're proposing: that is always was the ten years. That's what we thought; that's what we're asking the Legislature to approve. Because there would be some that have already been beyond ten years, it also adopts

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something from the curative laws from the early part of the twentieth century in real estate which says one year from enactment for those where it's already been ten years or it would be less than one year. As a result, we believe that there should be a statute of limitations. I also would like to inform I'm authorized to be here on my own behalf as well as on behalf of the Nebraska State Bar Association. If there are any questions I'd be happy to answer them. [LB137]

SENATOR ASHFORD: Thanks, Bill. Any questions of Bill? The practice is ten years. [LB137]

WILLIAM J. LINDSAY JR.: That's what we always thought it was but it isn't now under the Supreme Court. [LB137]

SENATOR ASHFORD: And that was fairly...and not since the Supreme Court case, it was ten, but up to that point it was ten years. [LB137]

WILLIAM J. LINDSAY JR.: Yes, Senator. [LB137]

SENATOR ASHFORD: That was the practice. And that was statewide. Everybody sort of followed that. [LB137]

WILLIAM J. LINDSAY JR.: Yes, it was. [LB137]

SENATOR ASHFORD: And the five years would be somewhat of a change from... [LB137]

WILLIAM J. LINDSAY JR.: No, the five years has always been there. That's where there actually was a determination of inheritance tax. [LB137]

SENATOR ASHFORD: Okay. Okay. Okay, thank you. Thanks, Bill. [LB137]

WILLIAM J. LINDSAY JR.: Thank you. [LB137]

SENATOR ASHFORD: Proponents? [LB137]

JON EDWARDS: Good afternoon, Senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm with the Nebraska Association of County Officials. We are here today in support of this bill. We believe that it provides clarity to the actual computation of the inheritance tax, and so I think that it's been explained fairly well where this came from and what it does. And with that I'll conclude my testimony. [LB137]

SENATOR ASHFORD: Thanks, Jon. Any questions? Thank you. Any opponents? Neutral? Thank you very much. Okay. LB152, Senator Pankonin. Welcome. [LB137]

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LB152]

SENATOR PANKONIN: (Exhibit 1) Good afternoon, Chairman Ashford and members of the Judiciary Committee. I am Dave Pankonin, P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I am here to introduce LB152. This bill was brought to me because I'm a member of the Health and Human Services Committee. LB152 proposes to correct a drafting oversight that occurred in 2005 when former Senator Dennis Byars introduced and the Legislature passed LB306. LB306 amended the requirement in Section 71-168 that credentialed persons report adverse judgments, settlements, or awards to clarify that the term "settlements" encompasses only those payments on behalf of a credentialed person that result in the patient releasing a professional liability claim against a credentialed person. LB152 is needed to harmonize two sections in the state's mandatory reporting law. This law requires licensed healthcare providers, facilities, and professional liability insurance companies to report information to the Department of Health and Human Services Regulation and Licensure. LB152 makes a similar change in Section 71-1,200 to clarify that the meaning of "settlements" in the reporting law for insurance companies is the same as it is in Section 71-168. For the record, I have two letters of support for LB152. One letter is from Dr. Joann Schaefer, Chief Medical Officer for the Nebraska Health and Human Services System. The other letter was submitted by the Nebraska Pharmacists Association. I also have copies for the committee of Section 71-168 that was amended by LB306 in 2005, and Section 71-1,200 that would be amended this year with the passage of LB152. I would be happy to answer questions if I can, however since I was not a member of the Legislature in 2005, David Buntain, who will testify on behalf of the Nebraska Medical Association, may be better able to discuss the details of LB306 and LB152. [LB152]

SENATOR ASHFORD: That is presuming a lot, Senator Pankonin. (Laughter) Before we continue I failed to introduce Stacey Trout, my legal counsel, and Stacey will be working on these bills so those of you who are interested in talking to her, she's in our office. And Jonathan Bradford is the committee clerk. Thanks, Senator. Any questions of Senator Pankonin? Thanks. [LB152]

DAVID BUNTAIN: Senator Ashford, members of the committee, my name is David Buntain, B-u-n-t-a-i-n. I'm an attorney and the registered lobbyist for the Nebraska Medical Association. And we were involved in working with the Health and Human Services Committee two years ago on LB306 which Senator Byars sponsored. And after that was enacted we realized that there was another provision in the statute that paralleled this section that we amended that also needed to be amended so that there wasn't a conflict between the two. And I know you get told a lot that bills are cleanup bills. This fits the classic definition of it. It's just intended to harmonize two sections and make it clear. We have felt all along that the word "settlement" does not include...would require some kind of a release. But there was some question as to that or we wanted to make sure that that was clear, and that's why LB306 was passed, but we need this

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change so that there isn't any question. I think Dr. Schaefer's letter concerning the background of it is very helpful. So with that I will conclude my remarks. [LB152]

SENATOR ASHFORD: Any questions? Yes. [LB152]

SENATOR LATHROP: I have just a few, and I know we have talked about this and maybe it would be worthwhile to have the record reflect some of the matters that you and I have discussed before you came in here today. What's...tell us...we're talking about essentially payments made in response to some type of medical malpractice claim or professional liability claim? [LB152]

DAVID BUNTAIN: That is correct. Where these statutes appear is in the chapter in the statutes that relates to Health and Human Services. And there is a law that was passed a number of years ago called the mandatory self-reporting law which says it's not just physicians but any healthcare provider, if certain things occur they have to affirmatively report that to the department. And one of the things that has to be reported is if they have made a payment for an adverse judgment or an award or a settlement, and that's the section we amended. There is also another section which requires the liability company to make that same report if they have paid. And so what this is, is it's a disclosure to the department, and the department can look at that and decide is this something we should follow up on as far as possibly looking in to disciplinary action. [LB152]

SENATOR LATHROP: Okay. And I want to follow what we're doing just a couple of steps so that we understand what's happening. [LB152]

DAVID BUNTAIN: Sure. [LB152]

SENATOR LATHROP: If a doctor makes a medical mistake and the insurance company pays a judgment or pays a settlement that results in a release, they then have to report that to the Department of Health and Human Services. [LB152]

DAVID BUNTAIN: That is correct. [LB152]

SENATOR LATHROP: What does the Department of Health and Human Services do with that? Do they only look at it in terms of whether they need to initiate a disciplinary proceeding or does that information then go to some type of a nationwide registry of payouts relative to that particular care provider? [LB152]

DAVID BUNTAIN: This relates to the disciplinary process. There is also what is known as the National Practitioner Data Bank which is a federal law that requires physicians and hospitals, it's primarily physicians and hospitals, if they make a settlement or have a judgment against them, they have to file a separate report, and there is, as I understand

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it, communication between the state and the feds, but there's a separate responsibility on behalf of the provider to report to that National Practitioner Data Bank. And that databank is accessible, for example, by all hospitals. They will look at that when they're looking at credentialing. [LB152]

SENATOR LATHROP: That's right. If they have somebody that is coming in from Florida or somewhere and they want to know if he should be at Creighton, they'll look at the registry to see if they have made payouts for medical malpractice claims with respect to that doctor. [LB152]

DAVID BUNTAIN: That is correct. [LB152]

SENATOR LATHROP: Does this affect who ends up on the federal list? [LB152]

DAVID BUNTAIN: No. The kinds of payments we're talking about are not reportable. It has to be a settlement or an adverse judgment. And as I understand it, the National Practitioner Data Bank takes the position that a settlement involves the release. So this would not affect...I mean, the issue of whether it's reportable at the federal level is a matter of federal law under the National Practitioner Data Bank. [LB152]

SENATOR LATHROP: In fact, that would make this be more consistent with the federal statute. [LB152]

DAVID BUNTAIN: Yes. I hadn't looked at it that way but I think you're right. [LB152]

SENATOR LATHROP: Okay. And one more question: What kind of payments are we talking about if you're not making a payment to settle a medical malpractice claim? What kind of payments might an insurance carrier pay to someone that would be covered by this? [LB152]

DAVID BUNTAIN: Well, I think the best example is the program, the COPIC, which is a medical liability carrier that's in Colorado now. They have started writing for physicians in Nebraska since the St. Paul company quit writing medical liability insurance. And under the COPIC program if patients notify physicians that they have concerns about the outcome of a case, and if it looks like it's something that can be resolved through a second procedure, through something that the physician can voluntarily do, COPIC has a policy if it meets their criteria of paying for that. They do not ask for a release and they do not...you know, if the patient...there is nothing that precludes the patient from pursuing legal action against the provider. But the concern is if the physician or the malpractice insurer makes a payment and the department...it was unclear whether the department was going to consider that a settlement or not for reporting purposes. And that's really the essence of what the issue is. [LB152]

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SENATOR LATHROP: All right. So this would cover if the doctor wants to...if they nick something during the surgery and they want to go through, do a second surgery and not have it turn into a malpractice claim, they sit down with the patient and say, we'll do it again. [LB152]

DAVID BUNTAIN: That's is correct. [LB152]

SENATOR LATHROP: That's all I have. [LB152]

SENATOR ASHFORD: Any other questions? Thanks, David. [LB152]

DAVID BUNTAIN: Thank you. [LB152]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator, do you wish to...? [LB152]

SENATOR PANKONIN: I'm just going to make a very quick closing if I can. One of the things that I thought was important to me in the letter from Dr. Schaefer that you have in your packet of materials is in the third paragraph, the last couple of sentences where it says, "I believe that harmonizing this portion of the law for insurer reporting is good policy for the State. Additionally, this change to the law does not prohibit the patient from filing a complaining directly with the department at any time and filing a lawsuit later." So I think we're trying to harmonize a couple things but it doesn't hurt a patient from being able to pursue those things later. Thank you. [LB152]

SENATOR ASHFORD: Thanks, Dave, very much. Thank you. We'll go on to LB586 I believe. Is that correct? Senator Cornett. Hello. [LB152]

SENATOR CORNETT: Hello. Good afternoon, Senators Ashford and members of the Judiciary Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, representing the 45th Legislative District. Most health insurers provide agreements as well as Medicare and Medicaid regulations. State that a medical provider accepts a negotiated rate in full payment for services and prohibit the provider from attempting the balance from the patient. Anyone who has received an explanation of benefits form from his or her insurer is aware that the insurer denies charges above the negotiated amount before making payment to the provider. The explanation of benefits form usually states the amount for which the patient is liable. The agreement between the provider and the insurer prohibits billing the patient for the balance. In recent years a practice has emerged through which some health providers use the lien statutes to avoid the prohibition on balanced billing. To understand this let me briefly explain how the lien statute works. Section 52-401 allows a hospital or physician to file a lien against the proceeds of a judgment or settlement obtained by the patient against a third party. For example, if Jones is injured when a car driven by Smith runs a red light and he is

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treated at the hospital, the hospital is entitled to file a lien in Jones' lawsuit against Smith. When Jones settles his case with Smith, the hospital is entitled to be paid from the proceeds. The purpose of this lien is to ensure that the hospital has a secure source of payment when it accepts a patient, for example, through an emergency admission. The practice now being used by some health providers is not to submit patient bills to health insurers. Instead, the hospital will file a lien in the case for the full amount of the bill and the patient then does not get the benefit of the insurance policy for which he or she has been paying premiums. In the example I mentioned, assume Jones is insured by Pirsch Health Insurance Company. Pirsch Health Insurance has negotiated with hospitals to pay 80 percent of its usual charges and the hospital has agreed to accept the payment as payment in full. But the hospital does not submit claims to Pirsch Health Insurance and charges Jones 100 percent of the charges by filing a lien in his lawsuit against Smith. Even though Jones has paid the insurance premiums to be entitled to the negotiated rate, the lien law allows the hospital to deny him this benefit. LB586 would correct this by limiting the lien so that the patient is entitled to any discount he or she would have received if the claim had been filed. So the hospital could still file a lien but would not exceed the negotiated rate. Others will follow me with additional testimony. I would ask that you reserve technical questions for those testifiers. Thank you. [LB586]

SENATOR ASHFORD: Thanks, Abbie. Any questions of Abbie? Okay, thanks. Do you want to stay? [LB586]

SENATOR CORNETT: Senator Ashford, I waive closing. [LB586]

SENATOR ASHFORD: Okay. Thank you. Proponents? Yes. Mr. Lathrop. [LB586]

MATTHEW LATHROP: Thank you. Good afternoon. My name is Matthew A. Lathrop, L-a-t-h-r-o-p. I'm here on behalf of the Nebraska Association of Trial Attorneys testifying in support of LB586. NATA would like to voice its support and echo the comments that Senator Cornett made. The statement of the problem was aptly made by Senator Cornett. I am a trial attorney and have been in practice for 15 years, and it is our experience that not every medical provider, but many medical providers in handling personal injury lawsuits on behalf of clients, those providers will either bill health insurance and then attempt to balance bill or send the rest of the bill to our clients after taking the benefit of health insurance. Or and in most more common situations, the healthcare provider will just withhold submitting the bill to the insurance company altogether and then wait till the case is settled, wait till the lien is in place and then seek a 100 percent payment on their balance or on the bill that they generated for the care. While we don't argue that providers should not be paid, the problem that this creates is manifold. First of all, the first and most important is that our clients aren't getting the benefit of the health insurance that they have paid for. They pay a premium to any health insurance provider. The provider has a negotiated term with the hospital or the doctor's office for, let's say an x-ray and an office visit, and instead of paying the

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negotiate price of \$150 for those two events, our clients are billed \$375 and the doctor's office will wait, and so the client doesn't get the benefit of the premiums and the negotiated price they've been paying for all that time for health insurance. The second is a more, I guess ephemeral reason we want to see the change, and that is our clients go through a lot of stress when they have these accidents. Having the injury, having the problems that they do, and dealing with getting better is bad enough, but when they received repeated and endless bills for medical treatment that they thought they had health insurance to pay for is stressful to them and doesn't either help the healing process nor does it help them deal with the ramifications of the injury. So we are here in support of this change to the provider lien. We don't want to see the providers receive any less than is fair because they've already gone out and negotiated a fair price with the providers...or the providers have negotiated a fair price with health insurance carriers that our clients have paid. So we just want to see what is fair happen for our clients. And if there are any questions I would be happy to answer those. [LB586]

SENATOR ASHFORD: Thanks. Any questions for Matt? Anyone? I guess not. We have an inside source here. [LB586]

MATTHEW LATHROP: I'll be back. Thank you. [LB586]

SENATOR ASHFORD: Good afternoon. [LB586]

GREG COFFEY: Chairman Ashford, members of the committee, my name is Greg Coffey, C-o-f-f-e-y. I am an attorney with Friedman Law Offices here in Lincoln, Nebraska, and I'm here on my behalf. When someone is involved in a motor vehicle accident that was caused by the negligence of another person, they can recover for their pain and suffering, their medical expense, and their lost wages, both past and future. Oftentimes though, between the bad driver's insurance and any underinsured motorist coverage that they paid for themselves, there is not enough insurance there to cover all of their damages. Health insurance may be available to cover medical expense but it doesn't cover lost wages or pain and suffering, and the party who was injured by someone else's negligence cannot turn in to their health insurance to cover things like lost wages and pain and suffering if the amount of liability coverage isn't enough to cover all of their losses. One person who found herself in this predicament was Sandy Eckhoff who I represented in a motor vehicle accident that happened in December 2001. Sandy is here with us today and I'll let her tell her story, but to set things up, in Sandy's case the person who caused her accident had only \$50,000 in liability coverage but was otherwise judgment-proof. She had an additional \$50,000 in uninsured or underinsured motorist coverage, for a total of \$100,000 in liability coverage to take care of lost income, pain and suffering, and medical expense that resulted from her injuries in the accident. However she also had health insurance that was virtually inexhaustible and within six months of her accident Sandy was already facing over \$200,000 worth of medical expense. The doctors she was seeing were part of her network, meaning that

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those doctors had agreed with her health insurance that in exchange for being on that approved list those doctors would accept certain discounts on what they would charge for people insured by Sandy's health insurance company. We can call the full amount the sticker price because it's similar to the sticker price on a new car. That's the amount they list but practically no one pays the sticker price. But some of her medical providers decided that they wanted to use the hospital lien law in order to circumvent the preferred provider agreement with Sandy's health insurance because that would, in their minds, allow them to seek the sticker price rather than the health insurance discount. They refused to turn her medical bills over to her health insurance. Not only that but they refused to furnish us with the forms or information so that we could turn the bills over to her health insurance ourselves. They wanted to obtain the full sticker price from that finite, limited source of liability coverage rather than the health insurance because they didn't want to be bound by billing rates that had been negotiated with health insurance that they had agreed to. Even after Sandy's case was settled and the funds disbursed, Sandy's doctors were taking the draconian position that they would or could still reject her health insurance and expect the full sticker price simply because the injury had been the result of another driver's negligence. They were prepared to deny her medical care if she didn't pay the full amount essentially out of pocket considering that the liability funds had already been disbursed. Sandy is here and she can set up the rest of her story but Sandy is disabled as a result of the injuries she received in this accident. She may never work again. The \$100,000 of liability coverage that was available is nowhere near enough to all of her damages, not even near enough to cover all of her expected lost wages. It certainly would have been beneficial if the providers had immediately been willing to turn their bills over to her health insurance and they had agreed before her accident had occurred. If there are no further questions I'll turn this over to Ms. Eckhoff. [LB586]

SENATOR ASHFORD: Any questions? The discount is what we're talking about in this bill then? [LB586]

GREG COFFEY: Essentially--the person who is involved in the accident if they have health insurance. If they don't have health insurance they are going to have to pay the full sticker price. But if they have health insurance they've been paying premiums to a health insurance company that's negotiated these discounted rates. [LB586]

SENATOR ASHFORD: Right, I understand that. But that's essentially the (inaudible)...that's that gap. [LB586]

GREG COFFEY: Correct. [LB586]

SENATOR ASHFORD: Okay. Thank you. [LB586]

SENATOR LATHROP: One point maybe, and that is if health insurance does pay for

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the care at the discounted rate, when Sandy's case is settled she has to pay back health insurance, right? [LB586]

GREG COFFEY: Ordinarily, yeah. In her case that wasn't the situation because her health insurance provider had agreed up-front to waive any legal right they would have to what we call subrogation. They had written to us and agreed in writing that they wouldn't seek any reimbursement of the money that they had paid just because of the situation where there wasn't enough insurance to go around. [LB586]

SENATOR LATHROP: And I don't want to lose my point on a specific example, so generally speaking the health insurance company is going to get repaid when the person makes a settlement. [LB586]

GREG COFFEY: That is correct. [LB586]

SENATOR ASHFORD: Thank you. Next proponent. Hi, Sandy. [LB586]

SANDY ECKHOFF: Hi. I would like to thank you for letting me testify in front of the committee today. My name is Sandy Eckhoff, E-c-k-h-o-f-f. I was in a car accident, as my attorney told you. I was T-boned and taken to a trauma unit. I sustained a broken neck, broken ribs, punctured lung, and a ruptured spleen, broken pelvic bone on both sides, two fractured vertebrae, and four exploded vertebrae where they were nonexistent anymore and had to be rebuilt. I was in ICU for a little under a month and then I was moved to Madonna where I was in for a month and was basically taught to eat and walk and function again. Upon coming home, within the first six months or so, like my attorney said, the medical expenses due to the fact that it was in December and (inaudible) January, so I had to meet my deductible twice and other things, the money that was received was barely comparable to cover a lot of my expenses and then I began receiving bills from my surgeon, a few of the other providers, because I had five doctors, for the full amount, not billed through my insurance, not billed through anything. And I was questioning this and end up having to fight in order to keep my settlement which, like I said, by that a six-month period if was almost nonexistent already because I'm a single mother of four. I was not able to return to work and I still had my health insurance, and they did not want to go through my health insurance. They wanted me to pay 100 percent of the bill out of my settlement and were even threatening to put a lien against my settlement for their...you know, what they had done for me. And I still am under a doctor's care and am looking a two more surgeries. I don't know where I would be if I hadn't of had what I did have, but I still have help from my family because it wasn't enough. But I could not believe though that, you know you pay your health insurance your whole life, I had never had so much as a broken arm or anything in my whole life, and I mean I wasn't able to use my health insurance according to my doctors. So it's a rough situation. [LB586]

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SENATOR ASHFORD: I think I understand. I think I understand what you're saying. Thanks, Sandy. Any questions of Sandy? Thanks for coming all the way down here. [LB586]

SANDY ECKHOFF: Thank you. [LB586]

SENATOR ASHFORD: Okay. Any other proponents? Any opponents? Any neutral testifiers? Good afternoon. [LB586]

BRUCE RIEKER: Good afternoon. Senator Ashford, members of the committee, my name is Bruce Rieker; that's B-r-u-c-e R-i-e-k-e-r. I'm the vice president of advocacy for the Nebraska Hospital Association and I'm here to testify in oppositioin to LB586. We believe that Nebraskans can be proud of the excellent healthcare avaiable throughout the state from all 85 hospitals that are members of our association. Every day our hospitals treat patients who lack health insurance and we provide more than one-half billion doldlars of care annually for which we receive no compensation. In addition, each year we absorb millions of dollars in bad debt. Hospitals are receiving less in Medicare and Medicaid reimbursements. I want to make a specific point here too. Medicaid and Medicare, there is one issue with the insurance, but also Medicaid and Medicare both reimburse the providers at below-cost. So I want to make sure that you know that about those two particular provisions that are supplemental, created by government. We face unfair competition from specialty hospitals, a new element on the scene, and we're required to spend millions of dollars and contribute countless hours to compliance. Despite the charitable care provided throughout Nebraska by its hospitals, there has been some national and now local attention, negative publicity concerning hospital collection practices and it's ignited much debate about hospitals, their charging practices, collections, and their charity care policies. Access to quality healthcare is predicated in part on the financial health of the provider. Payment from government sources, as I mentioned before, Medicare and Medicare and other insurance are often inadequate to keep hospitals financially viable over the long term. And as I beleive in the testimony prior to me, there was some interchanging of hospitals and in doctors that I want to make sure that I'm here testifying on behalf of the hospitals, including we provide our 24-hour emergency care. We are also responsible for accessing the latest technology, maintaining our physical plants, and providing the uncompensated care that I already referred to. Some have asked as recently as yesterday why the hospitals were absent in the debate over the homestead exemption. I think I'm going to step into that arena right now, why we didn't weigh into that. We have our fiduciary responsibility to seek payment for services from those who can pay and we believe every effort should be made to apply consistent, fair, and equitable collection practices. Having a collection's policy that is clear and consistent and that it reflects the mission, vision, and values of our member hospitals is our goal. Just last year, the Hospital Association, with the assistance of many of our members, developed a document entitled "Principles and Guidelines for Financial Aid Practices," which has subsequently been adopted by the

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vast majority of our hospitals--not all of them but the vast majority. Within that document were the following recommendations. Hospitals should work with the patient to establish a reasonable payment plan that incorporates flexibility such as extended payments and discounts, if appropriate. Legal action, including the garnishment of wages, may be taken by the hospital when there is evidence that the patient or responsible party has income and/or assets to meet his or her obligation. And I think that that's a qualification and I hope that you will take that into consideration, if they have the means to meet that obligation is our guideline. Third, and this is probably out of context for today, but I think it's germane to yesterday, hospitals will not force the sale or foreclosure of a patient's primary residence to pay an outstanding medical bill. And then last, hospitals will direct their external collection agencies to follow the established principles and guidelines and to act in a manner that is consistent with the hospital's mission, vision, and goals. Current law allows a lien to be placed upon any sum awarded the injured person in judgment or obtained by settlement or compromise on the amount due for the usual and customary charges. The fact that there is a sum awarded would indicate that there is evidence that the patient has the ability to meet his or her obligation, or at least part of it, and for the usual and customary charges for the services provided and that such amount should not be reduced. We hope that you will maintain our current laws so that hospitals can perform their fiduciary responsibility for all of those that they serve. And we appreciate our opportunity to comment on this matter and we urge you to oppose LB586. [LB586]

SENATOR ASHFORD: Yes, Senator Chambers. I... [LB586]

SENATOR CHAMBERS: No, go ahead if you have some questions. [LB586]

SENATOR ASHFORD: No, I should wait, but go ahead first please. [LB586]

SENATOR CHAMBERS: You are kind of champing at the bit, so go ahead. You might ask... [LB586]

SENATOR ASHFORD: Well, no, you, please. [LB586]

SENATOR CHAMBERS: Okay. [LB586]

SENATOR SCHIMEK: If neither of you want to ask a question,... [LB586]

SENATOR ASHFORD: Because I'll bet you my question is going to be asked. [LB586]

SENATOR CHAMBERS: Well, Mr. Rieker, he has just imposed an awesome responsibility on me. You kept mentioning fiduciary responsibility. To whom do you feel that fiduciary responsibility is owed? [LB586]

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BRUCE RIEKER: We believe that fiduciary responsibility is owed to all that we serve...all of those that we serve. That would include the patient... [LB586]

SENATOR CHAMBERS: Does it include the patient from whom you are going to try to extract this full amount and not allow the discount that you negotiated with these healthcare providers...I mean, with this insurers? [LB586]

BRUCE RIEKER: Well, some of those, Senator, are negotiated and some of them aren't. Medicaid and Medicare aren't... [LB586]

SENATOR CHAMBERS: Well, let me ask you this. [LB586]

BRUCE RIEKER: ...but as far as the insurance goes, yes, that, in most cases, that is negotiated. In some it's not. [LB586]

SENATOR CHAMBERS: Why did you agree to this discount idea anyway? There must be some benefit to the hospital, because with all your talk of charity, are you a...? Is your hospital a profit-making operation? Is it designed to be? [LB586]

BRUCE RIEKER: There is only for-profit hospital in Nebraska that I know of. [LB586]

SENATOR CHAMBERS: And yours is not one of them? [LB586]

BRUCE RIEKER: Well, we represent all 85. Eight-four of our members are nonprofit, who are charged with the responsibility of treating anyone and everyone who comes through their doors 24/7, 365. There is one for-profit but then all these specialty hospitals are for profit... [LB586]

SENATOR CHAMBERS: Why did you...why did your clients negotiate to the point where these discounts are granted? What is there in it for them, because they didn't do it just to be nice? There is some benefit they derived. What is that benefit they sought to derive? [LB586]

BRUCE RIEKER: Okay. In not all circumstances is there a negotiated arrangement without a... [LB586]

SENATOR CHAMBERS: Well, let's throw that word out. What is the benefit to be derived? [LB586]

BRUCE RIEKER: Okay. In a managed care situation there would be a negotiation between a hospital or a group of hospitals and that certain insurance provider that says we have this collective group that we are going to negotiate with you that you will provide this care for that whole group at X amount. Now, each one of those situations

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may be different. [LB586]

SENATOR CHAMBERS: What is the benefit to be derived by entering into such an arrangement, the benefit to your clients? What benefit do they expect to derive by being in that arrangement where a discount is to be granted? [LB586]

BRUCE RIEKER: Part of it is the financial arrangement that we have it already figured out what it would... [LB586]

SENATOR CHAMBERS: So, it's money. [LB586]

BRUCE RIEKER: Part of it; you bet. [LB586]

SENATOR CHAMBERS: Couldn't you have given me that one-word answer? [LB586]

BRUCE RIEKER: I could have. [LB586]

SENATOR CHAMBERS: You don't think there's anything wicked or evil about them getting money, do you? [LB586]

BRUCE RIEKER: No. [LB586]

SENATOR CHAMBERS: Okay. [LB586]

BRUCE RIEKER: I just want to make sure that there are different arrangements in all of these. If it's a private insurance carrier... [LB586]

SENATOR CHAMBERS: Okay, okay. I'm not asking you all that. [LB586]

BRUCE RIEKER: Okay. [LB586]

SENATOR CHAMBERS: You agree that the Legislature has the power to enact this bill into law. [LB586]

BRUCE RIEKER: Absolutely. [LB586]

SENATOR CHAMBERS: And if the Legislature, as a matter of policy, decides that fairness and equity requires us to enact such a bill into law, we can do that. [LB586]

BRUCE RIEKER: Absolutely. [LB586]

SENATOR CHAMBERS: You're here because your clients asked you to come here and oppose this bill, correct? [LB586]

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BRUCE RIEKER: Absolutely. [LB586]

SENATOR CHAMBERS: And they asked you to oppose it because they think they're not going to derive as much cash if this bill is passed as they would if it were not passed. [LB586]

BRUCE RIEKER: Not necessarily. [LB586]

SENATOR CHAMBERS: So they are not interested in the cash then after all? [LB586]

BRUCE RIEKER: No, I said not necessarily. It wasn't an absolutely answer, sir. [LB586]

SENATOR CHAMBERS: Well, is that part of the answer? [LB586]

BRUCE RIEKER: It's part of the answer. [LB586]

SENATOR CHAMBERS: And what's the other part now, quickly? [LB586]

BRUCE RIEKER: The other part of it is, the cash will always be involved but who is going to pay that? And I'll use this example: Right now, I'm on a group health insurance policy but when I was independently employed I had my own health insurance. I guarantee you that I had no negotiated arrangements with that... [LB586]

SENATOR CHAMBERS: Okay. Mr. Rieker, how many people would be involved in being denied this discount as a result of having been in one of the types of accidents which has been discussed? Do you have any idea of a number? [LB586]

BRUCE RIEKER: I have no idea. I think...I mean, I would only venture to say that maybe the trial attorneys would have a better number of them. [LB586]

SENATOR CHAMBERS: Well, you're the one here speaking against this bill so you ought to know the amount that we're talking about. [LB586]

BRUCE RIEKER: Right. [LB586]

SENATOR CHAMBERS: You don't have any idea of what that number is. If I tell you that there are 10 people per year who would be affected by this, could you say that my number is incorrect? [LB586]

BRUCE RIEKER: No, but I can sure find out for you. We do have... [LB586]

SENATOR CHAMBERS: Do you think it's incorrect? [LB586]

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BRUCE RIEKER: Yes. [LB586]

SENATOR CHAMBERS: Do you think it's too low? Why do you think it's incorrect if I say 10 people would be affected? [LB586]

BRUCE RIEKER: Because I believe you chose it arbitrarily. [LB586]

SENATOR CHAMBERS: But it could be right, couldn't it. [LB586]

BRUCE RIEKER: It could be right. [LB586]

SENATOR CHAMBERS: But you have a sensing that the number would be too low. [LB586]

BRUCE RIEKER: Right. [LB586]

SENATOR CHAMBERS: Because if it were only 10, your clients wouldn't even want you to make a battle over those 10 people, right? [LB586]

BRUCE RIEKER: Probably not. [LB586]

SENATOR CHAMBERS: So they think there might be considerable money involved in this whole thing, isn't that true? [LB586]

BRUCE RIEKER: Correct. [LB586]

SENATOR CHAMBERS: And the thing driving them really is, when we get down to it, the money. Okay. Thank you. [LB586]

BRUCE RIEKER: If I may comment on that. [LB586]

SENATOR CHAMBERS: Well, you answered me. [LB586]

BRUCE RIEKER: Well, I want to go back to it, if I do share a responsibility, the very first question. [LB586]

SENATOR CHAMBERS: But you answered me, thank you. [LB586]

BRUCE RIEKER: Okay. You're welcome. [LB586]

SENATOR ASHFORD: Senator Lathrop, do you have...? [LB586]

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SENATOR LATHROP: I do. I do have a question, something that just occurred to me. When you have health insurance is going to be the payor to one of your hospitals, does the health insurance carrier have some input in the care? In other words, if you want to do an MRI on the spine and you now are up to three MRIs in a week, are you going to get a call from Blue Cross/Blue Shield, for example, and say stop; we're not going to authorize three MRIs because you've already had two. [LB586]

BRUCE RIEKER: Yes--the precertification component. [LB586]

SENATOR LATHROP: So when you elect to file a lien against somebody's settlement proceeds under the lien law, rather than use their health insurance you avoid whatever input the health insurance carrier may bring to the efficiencies in the care provided. [LB586]

BRUCE RIEKER: I think you are going to have to help clarify that for me, sir. [LB586]

SENATOR LATHROP: I'll ask it a little differently. [LB586]

BRUCE RIEKER: You bet. [LB586]

SENATOR LATHROP: If you have Blue Cross/Blue Shield over here and they're saying, wait a minute, we think that's unnecessary care, the hospital is not going to have as much care provided to the patient and their bill is not going to be as big in the end. [LB586]

BRUCE RIEKER: Correct. [LB586]

SENATOR LATHROP: And then it will be discounted whatever that amount is, true? [LB586]

BRUCE RIEKER: Um-hum. [LB586]

SENATOR LATHROP: If you elect not to file with Blue Cross/Blue Shield, but rather file a lien, which is what we're here to talk about today and what you want to preserve, if you do that you have no one telling you not to do that third MRI, is that true? [LB586]

BRUCE RIEKER: Um-hum, that's true. [LB586]

SENATOR LATHROP: Okay. Thanks. [LB586]

BRUCE RIEKER: Now, and this is something, if I may, Chairman, I've heard it and today is the first impression for me of some of these questionable billing practices where they totally sidestepped submitting it to an insurance carrier, and so I will also go back

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and find out exactly how many...or if we can determine how many entities or providers are doing something like that. I don't know how many doctors it is either, or hospitals, so I need to find out some information there, sir. [LB586]

SENATOR LATHROP: Whatever the number, that really is kind of beside the point if we're establishing policy. That's one of the incidental benefits of lien law is you don't have to listen to the health insurance carrier in providing the care. [LB586]

BRUCE RIEKER: Okay. [LB586]

SENATOR LATHROP: That's all I have. [LB586]

SENATOR ASHFORD: Okay. [LB586]

SENATOR CHAMBERS: And probably I didn't ask your question, so maybe this is it. [LB586]

SENATOR ASHFORD: It was almost out. I had it about three-quarters of the way up my...(laugh). [LB586]

SENATOR CHAMBERS: From what your exchange was with Senator Lathrop, the information that you don't have when you came here but which might be essential to really having a thorough discussion of this issue from your side, could be taken to suggest that you came to a gunfight with an unloaded gun, as an analogy, because they like guns in Nebraska and everybody understands that kind of an analogy. Would that be a fair analogy? [LB586]

BRUCE RIEKER: Maybe. I would say that I have... [LB586]

SENATOR CHAMBERS: Well, if your gun is loaded then you can answer all of his questions. But you said you've got to go get some more information. [LB586]

BRUCE RIEKER: True. [LB586]

SENATOR CHAMBERS: Okay, so you didn't have all the ammunition, did you? [LB586]

BRUCE RIEKER: Okay. [LB586]

SENATOR CHAMBERS: So then you came to a gunfight with an unloaded gun. This is hard to... [LB586]

BRUCE RIEKER: Well, it was partially loaded. [LB586]

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SENATOR CHAMBERS Okay, thank you. [LB586]

SENATOR ASHFORD: And that was the question I was going to...(laugh). But I would like to know, I would like to...because I get the issue and I would like to...I would like to know, from your perspective, and you can come back with that information when you get it, how prevalent this is, because it seems to me to be something that would just be inappropriate. [LB586]

BRUCE RIEKER: Um-hum, and... [LB586]

SENATOR ASHFORD: I mean, if in fact it's a subversion, maybe it's not intended but it...when it comes out factually like it has here, it seems why would we ever, as a matter of policy, or why would hospitals ever do that as a matter of policy? I mean, I'm just trying to find some, other than money, to make it. [LB586]

BRUCE RIEKER: Right. [LB586]

SENATOR ASHFORD: But that's not your mission, and I respect that, by the way. So what I would like to find out is, being that it's not your mission, how prevalent this practice, to the best of your ability to find out, is so that we can evaluate the extent of it. [LB586]

BRUCE RIEKER: Right. Yes, I reiterate the position of the Hospital Association was as I laid out in this testimony. Now, as far as the bad actors, yes, I have no idea how many bad actors there are. [LB586]

SENATOR ASHFORD: And I hate to, myself, and I know there is bad news out there; I don't like to go looking for it, you know, either. [LB586]

BRUCE RIEKER: Right. But I will go find it; absolutely. I want to make sure that all of the senators on this committee, and if it makes it to the floor, that they have the most adequate information they can to assess it. [LB586]

SENATOR ASHFORD: Right, because it seems to have clearly happened in the case that was presented to us today. [LB586]

BRUCE RIEKER: Correctly. Yeah, I agree and that is truly an unfortunate circumstance which neither I... [LB586]

SENATOR ASHFORD: It gives us all a bad name, I guess. [LB586]

BRUCE RIEKER: Exactly. Neither I nor the Hospital Association would condone such a practice. [LB586]

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SENATOR LATHROP: What is the practice the Hospital Association wouldn't condone?
[LB586]

BRUCE RIEKER: Was to sidestep submitting this to the insurance and just doing all of
the care as you described and then filing a lien. [LB586]

SENATOR LATHROP: Okay. Maybe you could for this committee... [LB586]

BRUCE RIEKER: The Hospital Association... [LB586]

SENATOR LATHROP: Maybe you could, for this committee, talk to Creighton, Alegent,
BryanLGH, to find out whether it is their practice to file a lien in an injury case rather
than bill it to health insurance and then just communicate that to the committee clerk so
that we have...I'm trying to think if there's any others...but I think we'll have a fair sense
if we talk to the university, Alegent, Creighton, and BryanLGH. I appreciate that too.
[LB586]

BRUCE RIEKER: I will do that. [LB586]

SENATOR CHAMBERS: Mr. President, Mr. Chair, may I offer an olive branch, since I've
been slinging arrows? [LB586]

SENATOR ASHFORD: Sure. [LB586]

SENATOR CHAMBERS: Mr. Rieker, I understand that you are representing clients and
you have no responsibility for your clients' practices, and often because the lobbyist is
the one that people will see, the lobbyists, as a whole, are the ones who get a very bad
rap, and some of them may deserve it and some of your clients may deserve it, but in
this case I'm not saying that you as the lobbyist are the heavy in the sense of the
possible wrongdoer in this. You happen to have been the one to come here so you're
the one I have to address my remarks to. But you've been before us before and you
haven't had this kind of a relationship with me as far as our exchanges, isn't that true?
[LB586]

BRUCE RIEKER: Um-hum. That's correct. [LB586]

SENATOR CHAMBERS: Okay. So keep in mind that it's the nature of your presentation
and what kind of client you are representing that will determine how I have to deal with
you. Fair enough? [LB586]

BRUCE RIEKER: Thank you. That's fair, Senator. [LB586]

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SENATOR CHAMBERS: Okay. [LB586]

SENATOR ASHFORD: Thanks, Bruce. Or...I'm sorry; oh, my goodness. I always forget Senator McDonald. [LB586]

SENATOR McDONALD: No problem. And you represent the Hospital Association and umpteen hospitals. Do they all process this the same or is it independent of each hospital? Do they have the ability to choose how they are going to process it or is it all the same? [LB586]

BRUCE RIEKER: They absolutely have the independent authority to process it. The policies and guidelines that I shared with you, like I said have been adopted by the vast majority, however there are hospitals that have not adopted that. And so as far as how they would choose, I mean it isn't a mandatory element for them to do as I had described here so they could do it independent. [LB586]

SENATOR McDONALD: And so say some of the smaller hospitals kind of do it on a case-by-case basis if they feel that there is money sufficient to go about it by doing the 100 percent versus some of them may go through the insurance company and get the discounted rate, looking at the ability to pay? [LB586]

BRUCE RIEKER: I would imagine so; yes. [LB586]

SENATOR McDONALD: And because of the reimbursement on Medicare and the Medicaid (inaudible) is less than services, sometimes this is a way to keep some of our hospitals open because they are not able to get money from other entities, that the money is just not there? [LB586]

BRUCE RIEKER: True. That is correct. [LB586]

SENATOR ASHFORD: Okay, thanks, Bruce, very much. [LB586]

BRUCE RIEKER: You bet. [LB586]

SENATOR ASHFORD: Any other opponents? Neutral? Thank you. I believe Senator Cornett has waived. LB...Senator Wightman, LB384. Does this have to do with banking at all? I don't believe it does, but... [LB586]

SENATOR WIGHTMAN: Thank you, Senator Ashford and members of the Judiciary Committee. My name is John Wightman, spelled W-i-g-h-t-m-a-n...Senator Chambers may perhaps respell that...representing District 36. I come before you today to introduce LB384, a bill that would allow a judgment debtor who has no property and only protected income such as Social Security or disability income not subject to collection to

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file an affidavit setting forth such financial conditions with the court to avoid collection efforts of a judgment creditor who might attempt to enforce a judgment against the debtor. Currently, a judgment debtor can undertake collection efforts to enforce a judgment, obviously, against a judgment debtor without regard to the financial condition of the debtor. Under the terms of LB384, if a creditor pursues collection efforts after receipt of such filing and notification of the debtor, by the debtor or by the court, the creditor would pursue such efforts at his or her own risk. The judgment debtor is entitled to triple the attorney's fees and court costs expended by the debtor in such an event under the provisions of LB384. However, if the affidavit filed by the judgment debtor is determined by the court to be false, the judgment debtor shall be subject to a Class II misdemeanor. Excuse me. That's correct. The debtor would be subject to prosecution for that. So I am introducing this bill on behalf of the Area Agencies on Aging, and there are representatives following my introduction who will testify further why they believe that this legislation is necessary for the protection. They see this situation happening, and I will attempt to explain just briefly their position. With regard to many senior citizens and aged people who by the time they ever get an attorney, find that their bank account has been levied upon and has been used to pay the judgment even though all of that property would have been exempt. Usually the alternative is going into bankruptcy court, which is a costly proceeding, and for most debtors that we would be talking about here, and particularly elderly debtors, would be beyond their financial means. So I would be happy to try to answer any questions that you have, but the damages would be civil damages whereas the false filing of the affidavit would obviously cause, under the provisions of the act, cause the debtor to be guilty of a misdemeanor. [LB384]

SENATOR LATHROP: Thank you, Senator Wightman. Are there any questions?
Senator Chambers. [LB384]

SENATOR CHAMBERS: Senator Wightman, just in line with what you're talking about, although you didn't mention it, for some reason I'm viewed kind of as an ombudsman, and I get calls from people even when they know I might not be able to do anything but perhaps I can give them an idea. I've gotten calls from elderly people who are hounded and harassed by bill collectors until they are stressed out and they nothing...they don't have anywhere to go. They don't have any money, but they say, the person says, then you ought to get a relative to pay this and then I'll stop calling you. So there are all kinds of underhanded pressure tactics that are used, and they're taking advantage of elderly people. So to let you know that I'm aware of some of what you're talking about, you don't feel that our discussion on the floor the other day will sour my attitude on this bill because from what I hear of it I think it's a very good one and I think it's necessary. [LB384]

SENATOR WIGHTMAN: Thank you, Senator. [LB384]

SENATOR LATHROP: I do have one question for you if I may. [LB384]

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SENATOR WIGHTMAN: Sure. [LB384]

SENATOR LATHROP: Essentially what you're doing is replacing, in the process once a judgment is taken, they would have a debtors exam, would they not, generally? [LB384]

SENATOR WIGHTMAN: Right. [LB384]

SENATOR LATHROP: Okay. And what you're suggesting with your bill is replacing the debtor's exam, which is done face-to-face with the debtor under oath, and replacing it with an affidavit. [LB384]

SENATOR WIGHTMAN: That would be correct. And the affidavit would only constitute a rebuttable presumption. But there would be a presumption in favor of it that if they didn't overturn the evidence that was...or overcome, I should say, the evidence that was included in the affidavit, but then they could be liable for the triple damages. [LB384]

SENATOR LATHROP: Okay. Thank you for the answer to that question. Any other questions for Senator Wightman? Thank you very much. [LB384]

SENATOR WIGHTMAN: Thank you. [LB384]

SENATOR LATHROP: Do you wish to close, Senator? [LB384]

SENATOR WIGHTMAN: I will stay and determine after. [LB384]

SENATOR LATHROP: Okay. Very good. Proponents, please? [LB384]

JUNE PEDERSON: (Exhibit 2) Good afternoon. My name is June Pederson, P-e-d-e-r-s-o-n, and I am the director of the Lincoln Area Agency on Aging and currently the chair for the director's association. I have provided you a letter indicating that we asked Senator Wightman to introduce this bill, and briefly explaining why. The general counsel that we contract with, who is a specialist in elder rights, tells us that in her 20 years of experience she did initially very few of these kinds of appeals, but in the last year that has turned into at least 30 percent of the case load that she presently has. Given that and the confirmation from others in the area agencies, we asked Senator Wightman to put together this bill and bring it to you today. I believe that illustrations are better than testimony, so we have several people who have come this afternoon to tell you, to give you examples of what these people have gone through. So I thank you for that. I'll answer questions, but I'm sure they will be better at that. [LB384]

SENATOR LATHROP: Thank you very much. Any questions? Thank you very much for coming down. [LB384]

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HOUSTON DOAN: (Exhibits 3 and 4) Good afternoon. I'm Houston Doan, H-o-u-s-t-o-n, last name Doan, D-o-a-n. I am an insurance and financial counselor with the Lincoln Area Agency on Aging with the LIFE Office. We are passing out numerous stories that I think have already been alluded to, but I would like to share one of a very common scenario that I get called in on. And in my relatively brief time at the Lincoln Area Agency on Aging--I've been there seven years--my work load has gone from occasional debt problems to almost a constant handling and negotiating with debt problems for our older citizens. About two and a half years ago I received a call from an attorney here in Lincoln who happened to handle a gentleman's workmen's comp case. This gentleman was born in 1936. He was born with cerebral palsy but he had been able to work for many years and had saved a little bit of money and was hurt at age 62 and received a little bit of a workmen's comp payment. When he was 70, he suffered a heart attack, and because he was low-income, he was on Medicare but he didn't have enough money to pay for what we call the Medicare supplement that pays for what Medicare will not cover. Consequently, Mr. Johnson was told by his providers that if he didn't pay his medical bills, he would no longer receive treatment. At that point, Mr. Johnson had no choice but to put his unpaid medical bills on his credit card...credit cards. By the time I became involved with Mr. Johnson, he had about \$17,000 in credit card debt, which is really pretty small compared to some of the cases that I see today. He had roughly \$6,000 to his name in his retirement account. Under the direction of our legal counsel, we proportionately divided those monies among the creditors, along with a letter explaining Mr. Johnson's financial position; sent those letters off and the money. He has been hounded continually from that point on. I've been to the court once on one judgment to prove that he has only Social Security as his income; he has no assets; he lives in low-income housing. All of the creditors have been notified of this on an ongoing basis. What is even worse in this particular case is that Mr. Johnson also had on two of his credit cards, insurance that would take care of him becoming disabled. Of course, they denied that coverage as soon as they found out that, one, he was over 65 years old, and, two, he had Social Security--and they had been taking his premiums for a number of years after he had become 65. That's another issue. The most important issue is that besides the heartbreak and the torment that our individuals suffer, the amount of time that it takes our caseworkers to go to the court to meet with the judge should be better spent helping others. Thank you so much for your time. [LB384]

SENATOR LATHROP: Thank you very much, Mr. Doan. Any of the committee members have questions? Okay, thank you very much. [LB384]

CHUCK BENTJEN: Good afternoon, Senators. My name is Chuck Bentjen; that's spelled B-e-n-t-j-e-n, and I serve as director of justice and advocacy ministries for the Evangelical Lutheran Church in America. And also for the past 11 years I've worked as the supervising attorney for the South-Central Nebraska Area Agency on Aging in Kearney. And that agency provides a multiple multitude of service, including legal

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services to socially and economically needy people over the age of 60 in a 14-county area. And we serve approximately 700 new clients every year in that program. It's in both capacities that I'm here today to testify in support of LB384. I certainly don't have to tell you that Nebraska is a great place to live. We don't have any ocean beaches or mountains, but we have something better than that: We have a special way of life. I think we call that "the good life." Part of what makes it such a great place to live is that most people in Nebraska treat others with a sense of dignity and respect. In my work with the Area Agency on Aging, however, I have recently seen some creditors taking actions that display nothing but a lack of dignity and respect for their fellow Nebraskans. I grew up in Thurston County, which as you are probably aware, is one of the most impoverished counties in not only the state but in the nation, and I have worked for a number of years with some of the most vulnerable and impoverished people in our state. I certainly understand that not everyone who cannot pay their bills is irresponsible. Many elderly people, for example, are doing just fine, moving along on their meager Social Security income, which is a fixed income, and suddenly they have an illness and they have all of these additional expenses with no reasonable hope of additional income. Like all who are desperate, those folks rationalize that they can use the credit card to get by until things get better, but it's a hole that they seldom can climb out of. Before long, the creditors are calling and calling. They are absolutely incessant with their calls. We had one client who was in the hospital, and one of her daughter's creditors--not her creditors but her daughter's creditors--called her in the hospital to demand payment of her daughter's bill. The client then is often sued by the creditor. And in the past, when they would contact us, we would write what we called judgment proof letters advising the client of their financial situation, that they wouldn't be able to pay, and generally the creditors just accepted that and things were fine. In the past year, past couple of years, these creditors are, even though we send them these judgment proof letters, they are pursuing collection. And ultimately what happens is that the funds from their Social Security, which are not garnishable under the law, are garnished because the client doesn't file the claim for exemption that they need to file within three days of receiving the summons. And it's simply because they are so overwhelmed, embarrassed, and don't know where to turn. And I think it's just inexcusable that these Social Security funds are being garnished and that people are losing their property. We even had one client whose husband did not show up for a debtor's exam when ordered by the court to show up. He didn't show up because he was confined to a nursing home. The court issued a warrant for his arrest. Now, I'm sure the judge wasn't aware of the situation, but it's just ridiculous. And LB384 would certainly give us the opportunity to put creditors on notice that this person cannot pay, and yet still protect the creditor's right to pursue a debt. Thank you. I'll answer any questions. [LB384]

SENATOR LATHROP: Thank you very much. Let's see if anybody has any questions. Senator Chambers. [LB384]

SENATOR CHAMBERS: Vicar, how long did you say you've been doing this kind of

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work? [LB384]

CHUCK BENTJEN: I've been with the Area Agency on Aging in Kearney for 11 years, and prior to that I worked with what used to be the Nebraska Department on Aging and the Lincoln Area Agency on Aging. So almost 20 years. [LB384]

SENATOR CHAMBERS: And the relatively brief time during which this activity you've been describing to us took place, started to take place, about how long ago did that begin to really surface and become as serious of a problem as it is now? [LB384]

CHUCK BENTJEN: I would say in the last two years--probably a year and a half. [LB384]

SENATOR CHAMBERS: Does it seem that there might be almost an industry based on collection that is growing up or just what, if you have detected anything, accounts for this new assault on the aged, the vulnerable, and the uninformed? [LB384]

CHUCK BENTJEN: Senator, I can only speculate, but I think what is happening is that the creditors are represented by an attorney on an hourly basis, and it makes no difference whether or not they actually collect the debt; that they will receive payment for their services. And that's one of the things that I've seen happening. But it just seems to me that the aggressiveness of the creditors has been overwhelming in the last couple of years. [LB384]

SENATOR CHAMBERS: And to put this in perspective, if a person files a false affidavit, the creditor is not going to lose ultimately because...let's say that the...let me take it from a different angle. If this bill is passed, no injustice is going to be worked against anybody, is that your view? [LB384]

CHUCK BENTJEN: That's my view, Senator. [LB384]

SENATOR CHAMBERS: Okay. I was getting ready to ask an involved question, and then I remembered I didn't have to do that. Thank you. [LB384]

SENATOR LATHROP: Are there any other questions? If I may, I have a couple for you. [LB384]

CHUCK BENTJEN: Yes. [LB384]

SENATOR LATHROP: The fair debt...your bill or this bill would only apply if once there is a judgment entered, right? [LB384]

CHUCK BENTJEN: That is correct. [LB384]

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SENATOR LATHROP: And so a lot of the phone calls and the harassment that we're talking about happen before they ever get sued, is that the case? [LB384]

CHUCK BENTJEN: That's correct. [LB384]

SENATOR LATHROP: Does the Fair Debt Collection Act...am I using the right word? [LB384]

CHUCK BENTJEN: I believe so. [LB384]

SENATOR LATHROP: Does the Fair Debt Collection Act cover the prejudgment or the prelawsuit phase and stop the phone calls if something is done by debtor? [LB384]

CHUCK BENTJEN: It certainly is intended to, Senator. However, as a practical matter, litigation, even under the Fair Debt Collection Practices Act, is so expensive and costly for the person to pursue, it's not something that I would hardly ever recommend to a client. I would...I normally advise them to change their phone number to an unlisted number. [LB384]

SENATOR LATHROP: I appreciate that. Is there a mechanism in that federal act that you just described, the Fair Debt Collection Act, that allows them to give notice to the creditor to stop calling them at home, and stuff, calling them at work? [LB384]

CHUCK BENTJEN: There is a, if it's third-party creditor, in other words a creditor who is representing another party in collecting the debt, and they advise them that they have an attorney, then they are directed...they can no longer call them, they have to call the attorney. [LB384]

SENATOR LATHROP: Otherwise they can keep going on it. [LB384]

CHUCK BENTJEN: Right. But a lot of creditors now are actually transferring the...they're buying the debt. And so they're the creditor themselves and they make the calls, so they bypass that. [LB384]

SENATOR LATHROP: Okay. Any other questions? Thank you very much for your testimony. [LB384]

CHUCK BENTJEN: Thank you. [LB384]

SENATOR LATHROP: Any other proponents? [LB384]

LEA WROBLEWSKI: Good afternoon. My name is Lea Wroblewski. I'm a managing

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attorney at Nebraska Legal Aid and I supervise attorneys in five offices across the state of Nebraska, from Omaha, Norfolk, clear out to Scottsbluff. And I can tell you that collection practices or the enforcement of collection practices do vary by county. I was interested to hear Senator Wightman's description of how debtor's examinations are done. In fact, they're rarely done in front of a judge, in my experience. And I can also tell you that they are infrequently used. They're not held in conjunction with the request for a judgment, for example. And I think that that would be an excellent solution. But as it is, creditors are obtaining judgments based on affidavits by the attorney who's requesting the judgment, and the judge is granting an order, and the creditor attorney will then follow up and try and collect on that judgment. And in my experience, frequently that means that very low-income people have their bank accounts completely wiped out. And the effect is devastating. I brought with me...I could have filled this room; it absolutely has gotten worse recently. And I'm sorry, just to finish talking about debtor's examinations, I would really encourage anyone who is curious about this to go down to the Lancaster County Courthouse tomorrow around 10 o'clock. That's when they schedule what they call debtor's examinations. Essentially it is people who owe money, standing in the hallway, being interrogated by creditor's attorneys who are asking them to make payment arrangements. And as the previous testifier indicated, if you don't show up for those debtor's examinations, there are warrants issued for your arrest, and that might mean elderly people who simply can't get out of their house to come to court. And I was recently told by a creditor that he would not release the warrant for an individual's arrest until the judgment was paid in full. My biggest concern is that we have laws that protect assets for people who have very little. And the methods being used by these creditors to collect on judgments that they obtain, are taking those very limited assets. I brought with me a client, Mr. Hoy, who had \$154 taken out of his bank account. Now, if you're a middle-income person or a higher-income person, you can't understand why that's a problem. But I can tell you that for my clients, that is absolutely devastating. They don't have any other way to buy food to pay their rent, to pay their utilities. The income that they get, if it's \$604 a month from Social Security, is all that they have. And so even if they use the current method and request a hearing to go in front of a judge and request that that Social Security money be returned, you have to wait to have a hearing and get a decision, which you know is going to be favorable for the individual that comes to court, and then you have to wait for that money to be returned. And in the meantime, my clients incur substantial fees at the bank, who knew that the money was federal Social Security money in the first place because it was automatically deposited and it says right on the statement that it's federal funds. And despite that, creditors are getting orders that the banks are following, and giving exempt funds to pay, when in most cases are credit card bills which have been purchased and collected on by large collections law firms in the state of Nebraska. And I do think that this practice has gotten out of control. I think that LB384 would give debtors an opportunity to keep what should have been theirs in the first place. They have very limited funds and need every single dollar. And the current procedure that's being used by creditor attorneys harms the individuals that the claims of exemption laws were

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designed to protect. And I would be happy to answer any questions. [LB384]

SENATOR LATHROP: We have heard a lot of discussion this week about exempt property on the floor... [LB384]

LEA WROBLEWSKI: Yes. [LB384]

SENATOR LATHROP: ...and so I don't think we need to go through that. But if anybody has any other questions? Senator Chambers. [LB384]

LEA WROBLEWSKI: Yes. [LB384]

SENATOR CHAMBERS: When this debtor inquisition takes place at Lancaster County Courthouse, and a person does not show up and an arrest warrant is issued and the person is, in fact, arrested so that I can get to my question, is that person confined to a jail cell, or just what happens? [LB384]

LEA WROBLEWSKI: They are brought into court. In some counties, the debtors will post a bond and then the creditors will put a lien on the bonds that the person posted so they can get out of jail and go to court and to answer questions about their assets. [LB384]

SENATOR CHAMBERS: But the person will be put in jail? [LB384]

LEA WROBLEWSKI: They can be, depending on what county it is. [LB384]

SENATOR CHAMBERS: And that's how they...by doing it this way, they get around the unconstitutionality of the debtor's prison? [LB384]

LEA WROBLEWSKI: Yes. I used to tell... [LB384]

SENATOR CHAMBERS: They get to the same effect? [LB384]

LEA WROBLEWSKI: Yes. When I first started with Legal Aid ten years ago, I always told my clients, you can't go to jail for not paying your bills. And particularly with elderly people, it's a very emotional issue for them and you have to tell them, pay your rent, pay your utilities, don't worry about the credit cards; they can't put you in jail. I can't say that any more. [LB384]

SENATOR CHAMBERS: What is the basis for these debtor examinations or whatever they're called? Is there a statute that allows that? [LB384]

LEA WROBLEWSKI: There is. And I was curious, too, if the committee has seen the

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garnishment forms that are filed by the creditors, because I would certainly like to provide those to the committee is you haven't gotten them. [LB384]

SENATOR CHAMBERS: I would like to see that and I would like to see a copy of that statute, and I'd like you to contact me so that we can pursue it. I'm going to do all I can to see that this bill is advanced to the floor and I'd like to use it as a vehicle to bring some justice out of a very unjust situation. [LB384]

LEA WROBLEWSKI: I would appreciate that. [LB384]

SENATOR CHAMBERS: And I assure you that I'm not just saying this to get you to do some work. If you give me the ammunition, I know how to aim well and I know how to shoot straight and I generally bring down the quarry that I'm going after. And when it comes to these unscrupulous predators, not just creditors, I'd think they would rather run through hell in a gasoline-soaked outfit than to cross me, because I won't just get them on this one. I will drag it and make it apply to everything that pertains to them for the two years I have remaining in this Legislature, and I'll hurt them far more than they can hurt these poor old people. [LB384]

LEA WROBLEWSKI: Thank you. [LB384]

SENATOR PEDERSEN: Thank you. [LB384]

SENATOR LATHROP: Thank you for your testimony. Are there any other proponents? [LB384]

GEORGE HOY: Good afternoon. My name is George Hoy, H-o-y. I'm the person that the lawyer was just talking about. This is a very real thing in Nebraska. It happened to my wife and I where we had Legal Aid send letter after letter to them, and they knew our property was exempt. I have an \$800 mobile home, and they knew that was exempt. They knew our Social Security was exempt. When they hit us with a judgment, and I talked to some of them, they were from Florida, New York, Connecticut, and every one of them said to me, I don't have to listen to Nebraska law. And I said, well, you have to listen to federal law; this is Social Security. No, I don't; fight it; we're still going to do the judgments. And they did. And in 15 days before Christmas, we were up a creek without a paddle. My wife had to go without high blood pressure medicines. It was just terrible. And it seems like they target the elderly. It seems like we get harder. I started a group called Enough is Enough. I have over 117 senior citizens right here in Lincoln that are in the same situation, and they won't speak out. We don't go to a meeting; they write me, they call me, and vice versa. They don't go to a meeting out of fear. They're fearful. They don't want to raise Cain because they live in a mobile home court and the mobile home people say, you raise hell here, you might get evicted; we don't want you kicking up any dust. And most of them people go to financial Goliaths; they're all in cahoots. So

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those senior citizens, especially the poor and impoverished, we don't have a leg to stand on, except for senators or people that really want to get behind us, and the Legal Aid. Outside of that we don't have anybody. I thank you. [LB384]

SENATOR LATHROP: Mr. Hoy, thanks for coming down. Do any of the members have questions for Mr. Hoy? [LB384]

SENATOR CHAMBERS: I believe that I am nondelusional. Our we conducting this discussion within the territorial limits of the United States of America? [LB384]

GEORGE HOY: Yes, Senator, we are. [LB384]

SENATOR CHAMBERS: Are you an American citizen? [LB384]

GEORGE HOY: Yes. I'm also a veteran. [LB384]

SENATOR CHAMBERS: Are you being punished for some crime that you committed? Is that what they're doing to you? [LB384]

GEORGE HOY: I took a card off of Capital One, and I had a loan with a Payday Loan. That was my two crimes. [LB384]

SENATOR CHAMBERS: And all the things you mentioned to us are true? [LB384]

GEORGE HOY: That's right. [LB384]

SENATOR CHAMBERS: With all the things that I hear, we even have a preacher who comes and prays in the Legislature every morning, and yet these kind of things that you mention are happening, and I haven't heard the preachers talk about it; I don't hear the senators talk about it. But I'm glad that you brought it here and put it on the record so that when I say the things that I'm going to find it necessary to say, we have a concrete case of this happening to somebody. Now, you mentioned the fear of these elderly people. Other than the individuals who have spoken here today on the behalf of the elderly, who in government could you all turn to solve your problem other than coming to the Legislature? Have county attorneys shown any interest in this problem? [LB384]

GEORGE HOY: I don't know if I should say this but I'm going to anyway because I'm 69, my wife is 77. I don't see any light at the end of the tunnel because we're both disabled; we can't work no more. But our Legal Aid...I got the letter from Capital One, oh, for six, seven, eight months, and then all of a sudden...for about six or seven, eight months, they did nothing...and then right before Christmas of 2006 they nailed us. I went to Legal Aid and a letter came from an attorney in Omaha, and I've always said, here's an attorney, they should know better, they should know what's exempt. The letter was not

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only from an attorney but he's a state GOP chairman. That blew my mind; I couldn't believe this. Then the (inaudible) said, well, write to Senator Hagel. I said, if I write to Senator Hagel, in my opinion I'm writing to the fox that's guarding the hen house. That's my opinion. And so I didn't do that. I just stayed with Legal Aid. And like I said, they sent letter after letter. And every one of these creditors, they are outsourced, they're from India. I've got calls from India, people that I couldn't understand them. [LB384]

SENATOR CHAMBERS: But this Omaha lawyer, you said head of the GOP. What does that mean? The "Repelican" party? [LB384]

GEORGE HOY: He was state Republican chairman. [LB384]

SENATOR CHAMBERS: And he's the one who's...? [LB384]

GEORGE HOY: Well, he had the law firm and he specializes in credit collections. [LB384]

SENATOR CHAMBERS: And they're involved in what happened to you. [LB384]

GEORGE HOY: He threw the lawsuit against me. [LB384]

SENATOR CHAMBERS: I thought they were the party who have all the morality? [LB384]

GEORGE HOY: That's what I thought, too, Senator. It doesn't appear that way; no. [LB384]

SENATOR CHAMBERS: Okay. And I hope you don't feel that my questions were meant to harass you, because they're not. [LB384]

GEORGE HOY: No, I'm glad you asked them because I wasn't going to say that, since you really are interested. Yes, these are the things people don't understand. These are the questions...I never hear these questions asked. I've been doing this for 15 years, I've been writing letters about the poor and the impoverished. It's unbelievable. The atrocious and illegal acts that happen every day in Lincoln. I don't know how many senators here, I don't know how many people in elected officials, have ever been in Woodlawn, Gaslight, or Countryside mobile homes here in Lincoln. I'm there 12 years; I have never seen one. [LB384]

SENATOR CHAMBERS: What I would like you to do so that we won't take all of the time from other people who may testify, is get in touch with me so that we can pursue this. And any assistance I can give you, I will do that. [LB384]

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GEORGE HOY: Thank you very much. I really appreciate that. Thank you. [LB384]

SENATOR CHAMBERS: Okay. And I mean it. [LB384]

GEORGE HOY: Thanks for everything. [LB384]

SENATOR ASHFORD: Go ahead, Steve. [LB384]

SENATOR LATHROP: Any other proponents? Any opponents? [LB384]

PATRICK HENG: Senators, my name is Pat Heng, H-e-n-g. I'm a lawyer in Omaha at the firm of Raynor, Rensch & Pfeiffer. Also own the collection agency in Hastings, Nebraska, and on the Credit Bureau of Hastings. I'm here on behalf of the Nebraska Collectors Association. [LB384]

SENATOR LATHROP: Pat, could you speak up just a little bit. I'm having trouble hearing you. [LB384]

PATRICK HENG: I'm here on behalf of the Nebraska Collectors Association and also the Nebraska State Bar Association. We have agencies here from Beatrice, Grand Island, Lincoln, Hastings myself. And I'm here to speak in opposition of the bill, and it's really threefold. I think the first point is our current set of statutes do have some of these safeguards that are being discussed here. The garnishment statutes, the Legislature within the last ten years has required anybody doing a garnishment to send a notice to the debtor that they have the ability to object to a garnishment. And it's being used and continually to be used. The execution statutes require the state or the sheriffs who go out to execute them on property, to provide lists of exempt property, the amounts of the exempt property, the ability to request a hearing and to have that hearing. So those safeguards are in place already. I think it's been touched upon. I think some of the abuses we've heard have...it's kind of beyond what this bill is about, but still the Fair Debt Collection Practices Act would...what I'm hearing here, obviously prohibit some of these same things we're hearing. I think using, in Nebraska statutes regarding collection of judgments, I think if there's abuses going on with regard to those, we have appropriate sanction statutes that are in place right now to take care of these abuses. I think our Attorney General, what I'm hearing again, our Attorney General's consumer division has the authority to investigate some of these type problems. Being part of the Nebraska Collectors Association, we're mostly a small group...or, small businesses who collect solely in the state of Nebraska. And there's a whole industry that--which, again, sounds like where these abuses are coming from--which deal with, you know, national companies who can basically make phone calls, come in and operate here, because we're an open state. So I think we have the safeguards already in place. And this is really kind of redundant. I think secondly the problem is,...and maybe touched upon, Senator Lathrop, the question with regard to the debtor's exam. You know, that's the

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only opportunity really, or one opportunity, that a collection agency has the ability to (inaudible) assets. With an affidavit, we lose any ability to cross-examine the affiant, to find out if the truth...you know, maybe remembering, maybe, some stock or something that we're dealing with here. And so we lose that ability. And then I think the wording of the statute is a problem, because really, it says you got to challenge the falsity of the affidavit. Well, you know, six months ago, that may have been true, but six months from now, there's no requirement on the part of the debtor to supplement--they get a job, they get some other income coming in--because then we don't have the ability to find that out under...if the affidavit is on file. It's not a false affidavit at the time it's made. It may become...it doesn't become false later on; it's what it was at that time. And I think, finally,--I'm trying to speed up here--you know, the third point is really, the prosecution aspect is really hollow. I mean, in real life, I don't think a prosecutor or county attorney's office is going to weigh in. My wife is a prosecutor in Omaha, and I asked LeAnn (phonetic) last night, I said, is this something you guys are going to look at? No. I mean, they're not going to look at that. [LB384]

SENATOR ASHFORD: Well, the county attorney may not, but... [LB384]

PATRICK HENG: Pardon? [LB384]

SENATOR ASHFORD: No, go ahead. I'm sorry. [LB384]

PATRICK HENG: I'm sorry. You know, and quite honestly, other than a handful of counties, the county attorney's office is the office that you're going to look at to handle these things. So I think, for a number of reasons,...but the problems you heard today are really...it's beyond what we're talking about here. But there are safeguards within the federal statutes, our state statutes, and the government here, that take care of this. And it may not be the easiest thing, but it's available. [LB384]

SENATOR LATHROP: Thank you very much. Senator Ashford. [LB384]

SENATOR ASHFORD: Yeah, Pat, I understand what you're saying, but...and I understand the safeguards. But I...to me,...first of all, we're talking about a misdemeanor II, which is not a nothing violation. I mean, it's something. [LB384]

PATRICK HENG: I'm not saying the penalty. [LB384]

SENATOR ASHFORD: But all I'm saying is, I don't think the county attorney would do it. Maybe they would do it in the smaller counties. But in Omaha, it would be the city attorney that would probably... [LB384]

PATRICK HENG: The city attorney. (Inaudible) other than a handful of counties, it would be the county attorney. [LB384]

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SENATOR ASHFORD: But it seems to me that this is a fairly efficient way to handle it--filing an affidavit, listing the property that's exempt. If the affidavit filed by the judgment debtor is determined by the court to be false, then there...you don't have that ability now to seek prosecution, I don't think, for some kind of defalcation by the debtor. I mean, it's basically...the judgment debtor shall be subject to prosecution. Isn't that a...give you another...maybe I'm misreading it, but it would seem to me that it's giving you something else. [LB384]

PATRICK HENG: It's not our practice, I think, to prosecute somebody in order to get a debt paid. [LB384]

SENATOR ASHFORD: No, I understand that, but you get an affida...I know you don't prosecute people. I understand that. But you have an affidavit that sets forth this property that's exempt. And you...that's a starting point that you have if you... [LB384]

PATRICK HENG: The issue, I think, with the affida... [LB384]

SENATOR ASHFORD: So I'm having a hard time seeing why this is a bad thing. [LB384]

PATRICK HENG: Well, it eliminates at least the...(inaudible), but the question and answer. I mean, we're taking the affidavit as it is. We have no ability now to verify, to do anything other than...you know, I have to ask a debtor, if I'm doing a debtor's exam, I ask the debtor, what do you have? I mean, do you have a car, do you maybe have a car, do you have something over here? And you have a follow-up. I mean, you...by filing this affidavit, it eliminates that ability to even have that interchange with the debtor, to find out, to make sure they haven't forgotten this. Quite honestly, you know, the senior part of it is really...is, again, a different industry than what you're talking about, what we're talking about, the typical collection agency, because you know, we collect debts from people from 18 to 62, and so there's a whole group of folks that don't...aren't really part of the issue that we've heard today. [LB384]

SENATOR ASHFORD: Well, if you could still do the debtor's exam under the statute, if that was still available to you? [LB384]

PATRICK HENG: Well, no, once they file that affidavit, the way the...yeah. [LB384]

SENATOR ASHFORD: No, what I'm wondering, if you could do that, if you could still...it says, no further collection efforts. But if you could proceed with a debtor's exam, that would allow you to... [LB384]

PATRICK HENG: You'd have some of that process of give and take where you can

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follow up. [LB384]

SENATOR ASHFORD: Right. [LB384]

PATRICK HENG: Okay, you say the house is worth this, maybe it's worth more,... [LB384]

SENATOR ASHFORD: Right. [LB384]

PATRICK HENG: ...you know, so on and so forth. But that's eliminated under this statute. [LB384]

SENATOR ASHFORD: Well it is. Oh, never mind. I mean, I guess I understand what you're saying. But I...to me, the filing of the affidavit gives you a starting point from which you can proceed. [LB384]

PATRICK HENG: Well, I think...well, the way I guess I read it is that once that's filed, those kind of collection efforts are... [LB384]

SENATOR ASHFORD: I understand that. I understand. [LB384]

PATRICK HENG: And I think the other thing is, the affidavit is a snapshot of time. It may not be false at that time, but it...I mean, really, a month from now, a 19-year-old kid gets a job. Well, he doesn't have to supplement that, but it's not false at the time he's made it. The affidavit can continue on. It's not a living, breathing thing; it's a snapshot at that period of time, whether it's true or false. [LB384]

SENATOR ASHFORD: Okay. Thanks. [LB384]

SENATOR LATHROP: Thank you. Senator Chambers. [LB384]

SENATOR CHAMBERS: Do the victims you go after include elderly people? Or your group does not try to collect debts from elderly people? Is that what you're testifying to? [LB384]

PATRICK HENG: No, I'm not saying that. I'm just saying... [LB384]

SENATOR CHAMBERS: Okay, so then they are within the parameters of what your group does. [LB384]

PATRICK HENG: We collect from all age groups, yes. [LB384]

SENATOR CHAMBERS: Did you say you're representing these collectors and the bar

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association? [LB384]

PATRICK HENG: Yes. [LB384]

SENATOR CHAMBERS: The bar association knows that you're here representing the collectors also? [LB384]

PATRICK HENG: Mr. Mueller was informed of that. He's sitting here. Yes. [LB384]

SENATOR CHAMBERS: And so the bar association and the collectors have enough in common that one person can represent both their interests? Well, you can't serve two masters. They must be unanimous, or you are wearing two hats, where to take care of the interests of "A" will conflict with the interests of "B." And you can't...are you a lawyer? [LB384]

PATRICK HENG: Yes. [LB384]

SENATOR CHAMBERS: You can't do that. You can't represent me and Senator Lathrop at the same time if our interests conflict, can you,... [LB384]

: []

PATRICK HENG: That's correct. [LB384]

SENATOR CHAMBERS: ...unless we agree to it? [LB384]

PATRICK HENG: As a lawyer. [LB384]

SENATOR CHAMBERS: So what...tell me what aspect of your testimony relates to the interest of the bar association? What did they tell you to come here and testify about? [LB384]

PATRICK HENG: Well, I think the same thing--the collection process. As a private attorney, I represent banks, and the same issues would arise with regard to collection of a bank debt, be it a...any civil litigation. [LB384]

SENATOR CHAMBERS: Well, when I say the bar association, I meant that organization to which people must belong in order to practice law. Is that the one you're talking about? [LB384]

PATRICK HENG: The same one, yes. [LB384]

SENATOR CHAMBERS: So what did they tell you to come and testify to on their

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behalf? I know they're all lawyers. [LB384]

PATRICK HENG: Well, that was the issue, the issue of the collectibility, I think the fact that the statutes already have laws doing exactly what this statute is doing. [LB384]

SENATOR CHAMBERS: Are you...did they tell you to come here and tell us that if we enact this particular bill into law, we will be taking an unconstitutional action? Did they say this would be unconstitutional? [LB384]

PATRICK HENG: They didn't tell...I mean, that's been brought up, but not by the bar association, though. [LB384]

SENATOR CHAMBERS: So the bar told you to come here and tell us that this would put another law on the books which is not needed, and the bar is concerned about too many laws being put on the books? Is that what they told you to tell us? [LB384]

PATRICK HENG: No, they didn't tell me to tell you that either. [LB384]

SENATOR CHAMBERS: Well, what did they tell you to tell us? [LB384]

PATRICK HENG: The...I guess to inform the committee that, yes, there are...these safeguards are in place already. [LB384]

SENATOR CHAMBERS: That's all they told you to come here and tell us? [LB384]

PATRICK HENG: And I guess, same reason...or, some of the same reasoning that I...logic that I tried to use earlier, that, you know, it's already out there. [LB384]

SENATOR CHAMBERS: Did they pay you? Are you a paid lobbyist for the bar association? [LB384]

PATRICK HENG: No, sir. [LB384]

SENATOR CHAMBERS: Are you a paid lobbyist for the collectors? [LB384]

PATRICK HENG: No. [LB384]

SENATOR CHAMBERS: You're just doing it for both of them because you...this is pro bono, for the common good, that you're here? [LB384]

PATRICK HENG: Well, I...it's not pro bono, it's just what I...I own an agency; I'm a lawyer. [LB384]

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SENATOR CHAMBERS: And you're just doing it as a lawyer because you feel it's your responsibility as a lawyer to testify on behalf of the collectors here today? [LB384]

PATRICK HENG: No, it has nothing to do with me being a lawyer as to testifying... [LB384]

SENATOR CHAMBERS: Are you a collector? [LB384]

PATRICK HENG: I'm a collector to the extent I'm the litigator who handles my agency's lawsuits, yes. I mean, I don't collect on the phone. [LB384]

SENATOR CHAMBERS: If this bill were passed, it would cut into the income that you could make, or those you represent could make? [LB384]

PATRICK HENG: Not at all. [LB384]

SENATOR CHAMBERS: Would it make your job more difficult? [LB384]

PATRICK HENG: Actually, it would probably, if I read the statute correct, make it easier. [LB384]

SENATOR CHAMBERS: Counselor, if there are people who, by filing an affidavit, would become proof against some of these collection activities, from what I heard you say, that person may come into some assets which your group could go after and collect on. That's what I understood you to be saying. [LB384]

PATRICK HENG: Yeah, a 20-year-old kid could get out of college and get a job and start making income, and... [LB384]

SENATOR CHAMBERS: And if this bill were in effect, you couldn't do that. [LB384]

PATRICK HENG: We couldn't collect that debt. [LB384]

SENATOR CHAMBERS: And that would cut into the amount of money you would be able to collect, wouldn't it? [LB384]

PATRICK HENG: That would be correct. [LB384]

SENATOR CHAMBERS: So your clients would in fact be making less money if this were in place, wouldn't they? [LB384]

PATRICK HENG: No. I mean, I still don't say that. I still think then we'd have the argument which you'd have to make, saying, well, if they do have the ability to make

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money, have nonexempt income come in, you still have the collection process. What I was saying, all the individuals who spoke earlier, all they talked about was exempt income, and we don't get that anyway. [LB384]

SENATOR CHAMBERS: Well, now I want you to improve my education. How would the passage of this bill make it easier for your clients to get what they want? And if that's the case, why are you testifying against the interests of your client? [LB384]

PATRICK HENG: If I was taken as being...it's not easier to get what they want. It would be easier because it would stop collection process. I mean, it's easier on the collector, the simple fact, an affidavit is filed, they can't collect anymore. [LB384]

SENATOR CHAMBERS: And they would like that, then. We're doing them a favor, then, aren't we? [LB384]

PATRICK HENG: No, not really. [LB384]

SENATOR CHAMBERS: So then we're not making their life easier in the sense that we were perhaps led to believe you to be saying. In other words, when you said this would make it easier, I think the intent was to give the impression that we're not helping the people at all; we're helping the collectors, because it makes their job easier. [LB384]

PATRICK HENG: Oh, I wasn't meaning to convey that impression at all. So, Senator, if I did,... [LB384]

SENATOR CHAMBERS: So it really makes their job harder. [LB384]

PATRICK HENG: It would...well, again, if...depends how you read the statute, Senator. It's...you are prohibited, once that affidavit is filed, from doing anything collection-related. So what I was trying to say is, well, once you've prohibited lawful collection activity, you've eliminated that time-consuming...I mean, that part of it. As to "easier," that's what I meant. I didn't mean to say that it's easier to collect, because it's obviously not. [LB384]

SENATOR CHAMBERS: Okay, sonny, compared to me, you look very young. Do you have elderly relatives? [LB384]

PATRICK HENG: I have a 93-year-old grandma, still alive, who had one of the very same scenarios. And I tell you where it is, Senator; it's the credit card industry. It's not the industry where we collect hospital debt, we collect medical debt, or this or that. It's the credit card industry, and that's really where the problem is. But that's where she fell into it. She had a credit card, she used it, and they make it so easy for her to get to that, you know, she got into the same situation as one of the individuals here earlier had. I

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mean, that was exactly what it was. [LB384]

SENATOR CHAMBERS: Are you a member of that Omaha firm that was referred to by the gentleman who was up here earlier? [LB384]

PATRICK HENG: No, Your Honor. [LB384]

SENATOR CHAMBERS: Well, if there... [LB384]

PATRICK HENG: My firm, other than me, we don't do any collections. [LB384]

SENATOR CHAMBERS: If there are firms like that, they're outside the reach of Nebraska law, because they're representing one of these outfits functioning in another state. Is that what you're telling me? [LB384]

PATRICK HENG: No, they're not. Some of the...well, the Fair Debt Act would apply to them wherever they're at. The...and again, that's from the very first phone call, through collection activity. It would cover all that. And again, with the collection process, you know, if abuses happen--and we're talking litigation, here, after...we're talking post-judgment. You know, the...if a lawyer engaged in kind of some of the activities in the legal system, the sanction statute...the sanction sections of our statutes would...you know, could apply. It's up to the judge to make them apply, but they're available. [LB384]

SENATOR CHAMBERS: Now to get to a couple more specifics. And you came up here to testify, so that means you have to submit to what I want to ask you, just like if a lawyer is foolish enough to put his client on the witness stand, that client can be cross-examined. [LB384]

PATRICK HENG: That's right. [LB384]

SENATOR CHAMBERS: Okay. And, Your Honor,... [LB384]

SENATOR ASHFORD: Yes. [LB384]

SENATOR CHAMBERS: ...and Your Surrogate Honor, I can assure you I'm going somewhere with this. You said the Attorney General can do certain things, but that doesn't mean the Attorney General's Office will do those things. Correct? [LB384]

PATRICK HENG: That's correct. [LB384]

SENATOR CHAMBERS: So that could be chimera. That may not be a viable remedy for the people we're talking about. You wouldn't know the percentage of these collectors'

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business which comprises elderly people or impoverished people? [LB384]

PATRICK HENG: Each agency would have the ability, through their computer system, to figure out exactly the age group. [LB384]

SENATOR CHAMBERS: But I meant, offhand, you wouldn't have a guess? [LB384]

PATRICK HENG: Oh. No. [LB384]

SENATOR CHAMBERS: Okay, so I'm not going to push you on that. This debtor exam, you heard people talking about that, and you said, using that plural, personal, first-person pronoun "we," we have the opportunity to question the debtor. [LB384]

PATRICK HENG: Correct. [LB384]

SENATOR CHAMBERS: So when they have the cattle call for these unfortunate victims in the hallways of the courthouse, which might be misnamed the hall of justice, you are free to interrogate those people as to anything of value they may have which you may be able to put your hooks into? [LB384]

PATRICK HENG: That's correct. [LB384]

SENATOR CHAMBERS: And if that person is supposed to show up and does not show up, a warrant can be issued for that person's arrest? [LB384]

PATRICK HENG: Yes. They're ordered...it's a court order that issues them to be there. That's where the warrant process comes in. So... [LB384]

SENATOR CHAMBERS: Who seeks that court order? [LB384]

PATRICK HENG: The collection agency basically informs the court that it requests a debtor's exam. The court then issues an order which needs to be served, Douglas County constable, sheriff, or by sheriff, that requires that person to be there. [LB384]

SENATOR CHAMBERS: So then...I don't practice law on a regular basis, so you have to help me. When you inform the judge, the judge takes that information you're giving as a request. And without your requesting this order from the court, the court, of its own motion, grants the order? Or do you have...? [LB384]

PATRICK HENG: No. We have to make the request to the court. [LB384]

SENATOR CHAMBERS: Oh, so you request the order? [LB384]

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PATRICK HENG: Yes, the collection agency...or, the...and requesting...I shouldn't say "collection agency." Anybody trying to collect a debt--agency, attorney, or whoever--makes that request. [LB384]

SENATOR CHAMBERS: I'm just talking about those you represent. I'm making you not responsible for anybody else. [LB384]

PATRICK HENG: Okay. All right. [LB384]

SENATOR CHAMBERS: Your clients request this of the judge? [LB384]

PATRICK HENG: Yes. [LB384]

SENATOR CHAMBERS: And it results in the judge issuing a warrant? [LB384]

PATRICK HENG: No, he issues an order which is served, saying, you are ordered to appear on this date in court; if you don't appear, you could be subject to...or, a warrant could be issued for you. [LB384]

SENATOR CHAMBERS: And the warrant will charge the person with what, contempt, for not showing up? [LB384]

PATRICK HENG: Yeah, basically. Yeah, failing to appear. [LB384]

SENATOR CHAMBERS: Is it criminal contempt? [LB384]

PATRICK HENG: The...I wish I could answer that. My... [LB384]

SENATOR CHAMBERS: Can the person be jailed? [LB384]

PATRICK HENG: Well, they're taken into custody. The judge usually sets a bond amount. [LB384]

SENATOR CHAMBERS: And if the person can't post the bond, what becomes of that person? [LB384]

PATRICK HENG: They would be placed in jail at that time. [LB384]

SENATOR CHAMBERS: That person has a right to a lawyer, then, isn't that true? [LB384]

PATRICK HENG: That would be true. [LB384]

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SENATOR CHAMBERS: This is equivalent of a criminal contempt. Doesn't a person have the right to a lawyer in a situation like that? The bar association knows this is happening, and they told you to come up here and support that kind of activity? [LB384]

PATRICK HENG: Well, the activity that puts them in jail, the fact they fail to obey the court order. [LB384]

SENATOR CHAMBERS: Does the judge inform the person that you have the right to be represented by counsel? [LB384]

PATRICK HENG: Well, if they show up, there's no warrant issued. [LB384]

SENATOR CHAMBERS: No, I meant when the warrant is issued. [LB384]

PATRICK HENG: Oh,... [LB384]

SENATOR CHAMBERS: But you're not sure whether what I'm saying is accurate or not. [LB384]

PATRICK HENG: My experience is, the judges post a little bail, and it's posted. I mean, I've never... [LB384]

SENATOR CHAMBERS: But your experience is that if the bail is not posted, the person goes to jail. [LB384]

PATRICK HENG: They will be picked up. As to whether they end up in jail, I haven't had that, Senator. [LB384]

SENATOR CHAMBERS: Well, if they're not going to go to jail, why would I post a bond? [LB384]

PATRICK HENG: Well, they would. Assuming they can't post the bond, I would assume that's where they go to...they would go. [LB384]

SENATOR CHAMBERS: It's difficult to get responses, but I'm going to plow on, because I have a lot of patience. [LB384]

PATRICK HENG: (Laugh) Well, good. [LB384]

SENATOR CHAMBERS: This person sits in jail for how long, until he or her...until he or she purges himself or herself of the contempt? [LB384]

PATRICK HENG: No. No. [LB384]

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SENATOR CHAMBERS: So how long does a person stay in jail? [LB384]

PATRICK HENG: What they would do is then the debtor's examination would be held. They would... [LB384]

SENATOR CHAMBERS: And if the person says, I've got nothing, how long will this person be interrogated by your clients, based on your experience? [LB384]

PATRICK HENG: It would be my own personal experience, and the amount of the interrogation or the questioning would...it generally takes five minutes, tops. [LB384]

SENATOR CHAMBERS: It would take how long? [LB384]

PATRICK HENG: Maybe five minutes. [LB384]

SENATOR CHAMBERS: Say again? [LB384]

PATRICK HENG: Five minutes. [LB384]

SENATOR CHAMBERS: Oh, five minutes. How many have... [LB384]

PATRICK HENG: I can't speak for everybody, but that's my... [LB384]

SENATOR CHAMBERS: How many have you had dragged in because they didn't show up for one of these inquisitorial experiences? [LB384]

PATRICK HENG: I would say less than ten people. [LB384]

SENATOR CHAMBERS: Are you enjoying what we're doing? Be honest. Would you rather not be going through all of this, if it could be avoided? [LB384]

PATRICK HENG: No, I think the issue is important. I think the issues you're talking about are important, too, as to some of the abuses. I guess that's...you know, it's kind of beyond what I think this is...or, what designed to do, but... [LB384]

SENATOR CHAMBERS: Well, if we think it's going to do what we have in mind to do, then we should go on and enact it, shouldn't we, if we see that as our duty? [LB384]

PATRICK HENG: Well, if...like any other piece of legislation. [LB384]

SENATOR CHAMBERS: Now, do you think, when you come before this Legislature, that you're going to be questioned in the way that I'm questioning you? Is that what you

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expect? [LB384]

PATRICK HENG: Not knowing what to expect, after listening to some of the questions with the proponents, I anticipated probably there would be some questions of the opponents. [LB384]

SENATOR CHAMBERS: Could my type of questioning make a person uncomfortable? Could it? [LB384]

PATRICK HENG: It could, yes. [LB384]

SENATOR CHAMBERS: Are you at all uncomfortable? [LB384]

PATRICK HENG: No. [LB384]

SENATOR CHAMBERS: Have you been before a legislative committee before? [LB384]

PATRICK HENG: One time, maybe 15 years ago. [LB384]

SENATOR CHAMBERS: Does the Legislature have the power to put you in jail? [LB384]

PATRICK HENG: I think you have the authority to issue subpoenas and do certain things, and that if I don't comply,... [LB384]

SENATOR CHAMBERS: Can we order you to jail, though? [LB384]

PATRICK HENG: No, I don't believe that you have the ability to order to jail. [LB384]

SENATOR CHAMBERS: Can we take from you goods that you possess, or put ourselves in a position to get a legal process by which we'll seize goods that we discover that you may have? Do we have that authority? [LB384]

PATRICK HENG: Not that I know of, no. [LB384]

SENATOR CHAMBERS: So then somebody who is hauled into one of these debtor interrogations may face something worse than what I'm putting on you, isn't that true? And that person may be very, very stressed, very, very much in fear of what may happen to him or her, especially if he or she was dragged there by the sheriff or some representative of the law. Isn't that true? It could be a very traumatic experience, couldn't it? [LB384]

PATRICK HENG: Yes, it could be. [LB384]

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SENATOR CHAMBERS: And especially when the purpose of being dragged there is to perhaps take whatever little that person may have. [LB384]

PATRICK HENG: That could be part of the purpose, yes. [LB384]

SENATOR CHAMBERS: Suppose I were to get a law that would prohibit those kind of activities, this debtor examination, as it's euphemistically called. Would that kill off the collection industry? [LB384]

PATRICK HENG: No. I mean, again, it's a remedy my agency, for example, I would say, uses in probably less than 1 percent of the time. It's not a remedy that we seek, because typically, if we're doing our job, we know what most individuals have. Most people in Nebraska are pretty forthcoming as to what they have, and try to work out their debts. [LB384]

SENATOR CHAMBERS: So then if I were going to put legislation forward and try to have it adopted that would rescue that relatively small percentage of people in the total universe of those you're going to collect from, would your group resist that legislation if I offered it? [LB384]

PATRICK HENG: Well, depending on the language. Like I said, this has potential of abuses, of which we don't have the ability to remedy through the...you know, the debtor exam process. [LB384]

SENATOR CHAMBERS: Is that what my question was? Are you answering my question? [LB384]

PATRICK HENG: I believe I was, yes. [LB384]

SENATOR CHAMBERS: Well, I'm going to ask it more directly. [LB384]

PATRICK HENG: Okay. All right. [LB384]

SENATOR CHAMBERS: Would your group oppose legislation that I would offer to abolish this so-called debtor examination? Would your group oppose it? [LB384]

PATRICK HENG: Oh, yes, we would. [LB384]

SENATOR CHAMBERS: Now we're getting to it. Why would they oppose it? [LB384]

PATRICK HENG: Because that's, again, sometimes the only means in which you can ascertain information as to the collectibility of the debt, or assets which to collect.

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[LB384]

SENATOR CHAMBERS: If it affects only 1 percent of the people involved, why are you going to fight me for that small a percentage? [LB384]

PATRICK HENG: I said it affects my agency 1 percent. I'm not saying other agencies use it more than we do, because it is a remedy in which they're able to ascertain where a person works, where they bank,... [LB384]

SENATOR CHAMBERS: Well, will you be the one who would come here and oppose my legislation? Or will they send somebody else? [LB384]

PATRICK HENG: No, they'll probably...I will probably be here, yes. [LB384]

SENATOR CHAMBERS: Now, I've discussed the likelihood that I will do that, so I may offer it as an amendment. So it will not be something that was not discussed with the representatives of those I describe as predators. And in my discussion of this with you, do you feel that I'm joking or that I'm serious? [LB384]

PATRICK HENG: No. Senator, I totally agree that certain abuses occur. I'm just saying, what you want to address isn't addressed in this bill. It should be addressed, but this is... [LB384]

SENATOR CHAMBERS: Well, you don't know what I want to address. [LB384]

PATRICK HENG: Well, I was listening. [LB384]

SENATOR CHAMBERS: I'm telling you that I want to get rid of these debtor examinations, and I think I'm addressing that. [LB384]

PATRICK HENG: That's...okay. [LB384]

SENATOR CHAMBERS: I said, by way of an amendment. [LB384]

PATRICK HENG: Right. That's what I said, depending on what it says. [LB384]

SENATOR CHAMBERS: That means I would put something else in. And the reason I asked you if you think I'm joking, I want to be able to tell my colleagues I had a very serious discussion with a representative of the industry that will be directly affected by my amendment. Okay. That's all I have to ask of you, and thank you for your cooperation. [LB384]

PATRICK HENG: You're welcome. [LB384]

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SENATOR ASHFORD: Go ahead. I'm sorry. [LB384]

SENATOR McDONALD: Will you tell me exactly how a credit agency works? Say I'm a business, and Senator McGill owes me \$10,000. Do you come to me and say, you know what, I know she owes you \$10,000, because you go around finding out if there's opportunities to collect? Do you buy...do you come to me and say, you know what, we'll give you \$3,000; and you pay me and then you go collect and keep all the money? Or do you say, okay, we'll try to get 20 percent you can have, and we keep the rest? Or do you have an outlay of money before you go collect? Or is it on a percentage basis--if you collect, then you pay me? [LB384]

PATRICK HENG: The way most agencies work...and again, we're talking Nebraska collection agencies, and some of the credit cards is a national industry which is...you know, we're not associated with. But what happens is, you come to me and say, I've got this debt. You assign it to me, we have a percentage worked out. I spend money. If I need to sue them, then it comes out of my pocket. And to the extent we're able to collect it, we're reimbursed that and then we split the percentage, whatever we agreed to, as to what I'm able to collect. If I don't collect anything, I don't make any money; I've spent some money. If I do collect something, the money I spent I get back, and then a percentage of what I've collected I get back, and the remainder would go to you. [LB384]

SENATOR McDONALD: So who bears the cost of that? I get the percentage, regardless, and then you pay the cost of...or do I also bear the cost of you trying to get that? [LB384]

PATRICK HENG: My agency is, you bear no cost. So it comes out of our pocket, our company's pocket. You know, we're...and that's why, you know, we don't sue unless we're pretty comfortable we're going to be able to collect from somebody. [LB384]

SENATOR McDONALD: So in other words, you work real hard to get the money, to make sure that you can pay your bills. [LB384]

PATRICK HENG: Well, we work real hard per suing, to make sure that if we're going to sue and spend money, that we're going to at least be successful. And you know, again, you know, most of it is individuals who, you know, just whatever, don't want to work with you, who have the means to do so, and just...it's a matter of...if we have to sue them, it's just because they just haven't decided they wanted to work with us. Again, dealing a situation where people are receiving Social Security, it wouldn't be our policy to sue, because we wouldn't have the ability to recover, so. [LB384]

SENATOR LATHROP: Just a couple, if I can, short answers, if I can. Can you reduce

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the things that you ask to a one-page affidavit? I've seen these debtor's exams in the courthouse, and typically, the lawyer is walking around with a note card, right? [LB384]

PATRICK HENG: Yes. You...a lot of the stuff that's on those is really irrelevant. I mean, yes, because you can... [LB384]

SENATOR LATHROP: I mean, you ask, do you have a home, is it mortgaged, what's it worth,... [LB384]

PATRICK HENG: Yes. [LB384]

SENATOR LATHROP: ...do you have an income,... [LB384]

PATRICK HENG: Are you working. [LB384]

SENATOR LATHROP: ...do you have Social Security income. We're really talking about a half...a dozen questions maybe, don't we? [LB384]

PATRICK HENG: Right. Right. [LB384]

SENATOR LATHROP: Do you have a form for that? [LB384]

PATRICK HENG: Do I? I...there's forms out there. I do not use one, but there are forms. [LB384]

SENATOR LATHROP: I'm just wondering if you can provide... [LB384]

PATRICK HENG: Sure. [LB384]

SENATOR LATHROP: ...the committee with the questions you would ask in a debtor's exam that might be part of the affidavit this addresses. [LB384]

PATRICK HENG: Okay. [LB384]

SENATOR LATHROP: Can you do that? Yes? [LB384]

PATRICK HENG: Yes. I'm sorry, yes. [LB384]

SENATOR LATHROP: Okay. The other thing, you talked about, the problem with the bill is that it takes a snapshot and doesn't give us a picture of what somebody's income is, or their assets, six months down the road. If we had the person, the debtor, file an affidavit every two months, would that...would you have less objection to this process, and would we see fewer debtor exams? [LB384]

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PATRICK HENG: You would see fewer debtor exams. I think...I still think the...for example, somebody may think something is exempt, and there turns out to be not, after discussion, and you realize what it is. I can see eliminating debtor exams, but I think you still...you know, at least the opportunity at least once to sit there and be able to sit down and find out what that person is all about is important. [LB384]

SENATOR LATHROP: Okay. And one more question for you. The penalty here for going after somebody once they file the affidavit is an award of triple the attorney fees and court costs expended by the judgment debtor in the proceedings. Do you think it would be more of an incentive not to follow up after the affidavit has been filed if the debt is forgiven? [LB384]

PATRICK HENG: If a debt has been forgiven,... [LB384]

SENATOR LATHROP: In other words, if you bother somebody once...after they file the affidavit, and the debtor can show the court that's taken place, the debt is then discharged. [LB384]

PATRICK HENG: That would be a deterrent, yes. [LB384]

SENATOR LATHROP: That would be more of a deterrent than three times the attorney fees? [LB384]

PATRICK HENG: Oh, I see. Yeah, I...either penalty...I mean, obviously, any time you triple the damages, it's a deterrent. [LB384]

SENATOR LATHROP: All right. That's all I had. [LB384]

SENATOR ASHFORD: If I could, Pat, I...following up on this whole debtor's exam, I...you know, practicing law for 30 years in Omaha, it's a silly system. And it is degrading (laugh) to the lawyers who have to give them, quite frankly. But when you're a young lawyer, that's what you do. You do debtor's exams. Maybe they're not done by lawyers anymore. I haven't been practicing for a few years, but...about five years. But I think we might have something here. I...the idea of filing an affidavit with your property that you...that's exempt, and...or some sort of affidavit that this statute provides for, and maybe adding to that an affidavit that lists...you know, lists your property, the same kind of questions you would ask in a debtor's exam, but it would be...the form questions...you don't...I mean, there's not a lot of creativity that goes into a debtor's exam. And then you...the debtor files that affidavit. I think what...the idea of trying to level this just a little bit. And I...it's the same sort of philosophy I have with the issue of the \$60,000 of exemption, is, we're not trying to...we don't have debtor's prison anymore, hopefully, in the United States. We're not trying to punish people. We just want the market to work.

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People who borrow money should, within reason, pay that money back. And I believe that, and I think that's the way it should be. But I also believe in the goodness of people, and I think that if you...and I know you do, too, and I'm not saying you don't. But what I think is that if you give people a chance, they're going to...and don't beat them up--not you, but anybody that's trying to collect a debt--the chances of collecting that debt are better. And so if you allow them to have a fresh start, which is what the bankruptcy code is all about, and if we kind of adopt that philosophy in our state law and come up with something that is less obtrusive, where you don't have to go down to the courthouse, but you can file an affidavit, and that affidavit could be more comprehensive, and if there are penalties if you lie on the affidavit, then to me, I don't see the problem. I mean, I think...you know, I think you'll collect just as much money, and you won't have to spend time down in county court, which is a fate worse than just about anything. I mean, I don't know. [LB384]

PATRICK HENG: I agree. [LB384]

SENATOR ASHFORD: Not that...I mean, Pete's part of county court is good. He was in the...I don't...I was not suggesting that your county court experience (laugh)...but I seriously think...I think Senator Chambers and Senator Lathrop are on to...and Senator McDonald, are on to something here. Anyway, we can talk about it, but... [LB384]

PATRICK HENG: I agree, and I think most Nebraskans...99 percent of Nebraskans will pay their bill. [LB384]

SENATOR ASHFORD: Right, that's what I think, too. [LB384]

PATRICK HENG: I mean, be it \$5 a month, that's...and you let them do it. And really, so it's... [LB384]

SENATOR ASHFORD: And this way, if you file your affidavit,...and let's say it's in the case of law firms that do lot of collection work, and it's just a machine. I mean, they take credit cards and they pay the debt through a credit card or whatever. But you file that affidavit, that affidavit is filed, and for some reason, if that lawyer has reason to believe, or that, whoever it is, that that affidavit is incorrect, either because they...when they took out the credit, they had...gave information about additional property--for example, if it's a credit card or if it's another kind of transaction where they list their property and it's not on the affidavit--you know, it seems to me that you could ask the court to examine that situation. [LB384]

PATRICK HENG: The...I guess my issue on that was just the continuing nature, because like I said, an affidavit is a snapshot at that time. And so... [LB384]

SENATOR ASHFORD: But I like the idea of getting rid of the debtor's exam. I think...I

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mean, I think that really makes sense, and will not inhibit your ability to collect, because you should have a reasonable ability to collect from nonexempt property. Okay, thanks. [LB384]

SENATOR CHAMBERS: I have one more question. Did you have any idea that when you came here to defend these that I describe as predators, that what you might wind up doing is starting in motion the chain of events which will eliminate the debtor's exam? Did you have any idea that might happen as a result of your coming here today? [LB384]

PATRICK HENG: I didn't know that would be the result of me coming here today. [LB384]

SENATOR CHAMBERS: Well, I want you to know, when I achieve this very wholesome societal goal, you had a very heavy hand in achieving it. (Laughter) That's all I would have. [LB384]

PATRICK HENG: I'm sure my industry will be happy to know that I've done that. (Laughter) [LB384]

SENATOR ASHFORD: It's like a Thomas Mann novel. We've sort of gone around... [LB384]

SENATOR LATHROP: Thank you very much. [LB384]

SENATOR ASHFORD: Go ahead and finish it off. [LB384]

SENATOR LATHROP: Mr. Hallstrom. [LB384]

SENATOR ASHFORD: It's your baby, Steve. [LB384]

BOB HALLSTROM: Chairman Ashford, members of the committee, my name is Robert J. Hallstrom. I appear before you today as the registered lobbyist for the Nebraska Bankers Association, in opposition to LB384. Mr. Heng, before me, went through many of the issues that I intended to touch on--the protections that exist under the current law, the issue of whether or not the enforcement of the penalties for false affidavits are sufficient to ensure that the system will not be abused if this particular approach is adopted. Something different, though, in my testimony, I think. The reason I was concerned about the effectiveness of the enforcement are the unintended consequences of the ability to file the affidavit and the significance of curtailing any further collection efforts by a creditor. And the reason I say unintended consequences, our industry has been faced by fringe organizations, if you will, such as the Posse Comitatus, over the years, that have taken it upon themselves to file all kinds of bogus

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documents, either against judges who were presiding over a case that they were involved in, the attorneys that were involved in the litigation, or the lenders that were involved in collecting actions. So I think that's a significant issue to take a look at. In those cases, we have found that the individuals that are part of those organizations do not fear the type of enforcement that we look at in the Class II misdemeanor penalties at all. I think the other aspect, unfortunately, and particularly with some of the individuals who have faced hardships that have testified today, I think one of the outcomes of 28-915.01 is, the ability to show that the affidavit was filed falsely is dependent upon the person having reason to know that it was not true. I think when you're talking about individuals that are in this type of situation, a fact of law and the application of the law, what is the exemption level, etcetera, that you're probably going to find many, many cases where the county attorney, even if they have time to carry through with prosecution, are probably going to be hard-pressed to carry through under the facts and circumstances of a particular individual who may have filed an affidavit. I think the snapshot issue is one that would have to be addressed. Senator Chambers, you had addressed whether or not the law is unconstitutional. I would probably only suggest there's a possibility, but only because of the particular sanction that is currently there. Triple attorney fees may very well be seen as punitive damages, in violation of our constitution. Certainly, it's probably something that could be addressed by changing the statute, but I think that would be perhaps a flaw with the statute on its face at this time. I'd be happy to address any questions the committee might have. [LB384]

SENATOR CHAMBERS: You touched on what I was kind of hinting at. But you notice, the bar representative didn't bring it up, did he? [LB384]

BOB HALLSTROM: I don't believe he did. [LB384]

SENATOR CHAMBERS: He didn't...and didn't I give him the opportunity? [LB384]

BOB HALLSTROM: Yes. [LB384]

SENATOR CHAMBERS: Didn't I ask him a leading question relative to constitutionality? [LB384]

BOB HALLSTROM: That you did, Senator. [LB384]

SENATOR CHAMBERS: And he's the one that the bar association sent here to talk to this committee. Is that true, from what you heard him say? [LB384]

BOB HALLSTROM: From his testimony, yes. [LB384]

SENATOR CHAMBERS: And the bar association is composed only of lawyers, isn't that true? [LB384]

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BOB HALLSTROM: Yes, sir. [LB384]

SENATOR CHAMBERS: And he mentioned a Mr. Mueller. And if it's the same Mueller that I'm familiar with, he has testified before this committee representing the bar association. [LB384]

BOB HALLSTROM: I'm sure he has. [LB384]

SENATOR CHAMBERS: So when a senator asks a question relative to the issue of constitutionality, and the representative for the bar association does not give a straightforward answer, that could cause me to wonder about the reliability of testimony of lobbyists for the bar association, couldn't it? [LB384]

BOB HALLSTROM: Well, Senator, I would not comment on that. It certainly could lead you to that, but I would make no comments as to the... [LB384]

SENATOR CHAMBERS: You're a lawyer. [LB384]

BOB HALLSTROM: Yes, sir. [LB384]

SENATOR CHAMBERS: You belong to the bar association. [LB384]

BOB HALLSTROM: That I do. [LB384]

SENATOR CHAMBERS: You pay dues to the bar association. [LB384]

BOB HALLSTROM: Yes, I do. [LB384]

SENATOR CHAMBERS: That man was representing you, too, wasn't he, as a member of the bar? He was representing you also, wasn't he? [LB384]

BOB HALLSTROM: In his capacity today, yes. [LB384]

SENATOR CHAMBERS: Now, I didn't even have to ask you the question directly about constitutionality. From the way I phrased the question to him, you were able to zero in right on the part of the bill that I perhaps had in mind. [LB384]

BOB HALLSTROM: Yes, Senator, and I already had it in my notes, to boot. [LB384]

SENATOR CHAMBERS: Now, there's such a thing as liquidated damages, isn't that true? [LB384]

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BOB HALLSTROM: Yes. [LB384]

SENATOR CHAMBERS: And the Legislature can formulate what it considers to be liquidated damages, and actually put a dollar amount in the law. Can't it do that? [LB384]

BOB HALLSTROM: I believe so, Senator. If the issue comes down to punitive damages, which may be different, but punitive damages, I believe, have to go into the Permanent School Fund in order to have them under statutory law. [LB384]

SENATOR CHAMBERS: But punitive damages would be in the formulation of what we have here--treble the actual damages, or treble the lawyer fees, perhaps. [LB384]

BOB HALLSTROM: I believe that's correct. [LB384]

SENATOR CHAMBERS: But by putting in a liquidated dollar amount is not necessarily going to be construed as punitive damages. [LB384]

BOB HALLSTROM: We, Senator, have struggled. I don't know that we have the answer to that, but we have struggled in the past on the Uniform Commercial Code, when we have had situations where they would say that you will pay \$500 or \$1,000. We've also had these discussions in depth when we've had the penalties--I'll call them penalties--but the penalties that apply for failure to release a mortgage in a timely fashion. So we've struggled with whether or not that type of liquidated damages would run afoul of the constitution, but I don't know that we...we chose not to go that route because of the concern, but I don't know that we had the final answer to that issue. [LB384]

SENATOR CHAMBERS: But we have a statement from the Nebraska Supreme Court that punitive damages are not allowed in this state to be recovered by... [LB384]

BOB HALLSTROM: Individual. [LB384]

SENATOR CHAMBERS: Right. Okay. Now I'm going to go into the area that you probably feel very comfortable with, namely, the bankers. Now, what percentage of the bankers' debtors would be benefited by this bill, to the detriment of the bankers? In other words, what I'm asking you, what harm did the bankers tell you passage of this bill would do to their money-making opportunities? [LB384]

BOB HALLSTROM: Well, I don't think I have any hard figures, Senator. I think just as a general proposition, you're looking at any other business in terms...and we've had this discussion quite recently, I believe. Any other situation, that if a lender, traditional lender, finds itself in an unsecured position, those are the situations where if they

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pursue a judgment for that unsecured portion of their debt, if it was secured and they seek a deficiency judgment, or if they did not take security initially, then they will become a judgment creditor, just like a main street business or any other type of provider. And those would be the situations where they would either pursue collection activity on their own, through their attorney, or potentially through a debt collection agency. [LB384]

SENATOR CHAMBERS: Okay, so now you've given the bankers standing to show a legitimate concern about this bill. [LB384]

BOB HALLSTROM: I would hope so, Senator. [LB384]

SENATOR CHAMBERS: If this bill were to be enacted into law, what is the worst thing the bankers told you could happen. Instead of all this complex discussion about, we lend to people who may have debtors and if they cannot go after their debtor in this way they may not be able to pay us what we lent to them, what directly will happen to the bankers that is detrimental, if this bill were enacted into law? They certainly told you. [LB384]

BOB HALLSTROM: Well, I think, Senator, maybe not at the end of the day in terms of the collections, because you would hope that all of that would sort itself out, even through this process, in terms of, if the affidavit is filed truthfully, then you wouldn't pursue collections anyway. If the affidavit is filed falsely, though, I think one aspect of the entire system, both in terms of cost to the players or the participants in that and to the court system, are that you will have another layer of court activity that's necessitated by opening up the avenue for someone, inadvertently or otherwise, to file a false affidavit, curtail what otherwise would be legitimate collection efforts, and require all of us to go into court for one additional step, and take up court time and court personnel. [LB384]

SENATOR CHAMBERS: So what's your point? What do you care about how much time it takes the court? Do the bankers...do you represent the courts, too? [LB384]

BOB HALLSTROM: It costs us money to go through that, Senator. [LB384]

SENATOR CHAMBERS: And if you had to spend more money than you're likely to recover, you're not going to spend that money, are you? You don't send good money after bad. Or do you? Is that what your clients do? [LB384]

BOB HALLSTROM: We would hope not. We would hope not. [LB384]

SENATOR CHAMBERS: They'd spend 20 cents to collect a penny? Is that what you're telling me? [LB384]

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BOB HALLSTROM: We would hope that's not the case. [LB384]

SENATOR CHAMBERS: But if they'd do that, then they're so foolish that we ought to pass more bills like this and weed out those stupid bankers. Intelligent bankers would not spend two cents to get one cent. They might even think a long time to spend a penny to collect a penny. They want profit; they don't want to just break even. Isn't that right? [LB384]

BOB HALLSTROM: That would be correct. [LB384]

SENATOR CHAMBERS: Okay. Now, Mr. Hallstrom, the bankers wouldn't have any concern or interest in whether or not I successfully persuade the Legislature to do away with the debtor examination. The bankers wouldn't have any direct interest in that, would they? [LB384]

BOB HALLSTROM: Senator, I don't think so. In fact, actually, one thing that I was going to suggest with regard to the bill today, that maybe, after the fact, plays into some of the comments that you've made, is that one of the things that occurred to me is that the affidavit simply, right now, says, I don't have any property that's not exempt. I think Senator Lathrop may have been going down the line of questioning as to whether or not the affidavit ought to be more fully completed, in terms of saying, here's the reasons why I don't have the assets, the valuations, if appropriate. And then you would know from the face of the affidavit. It's not just a blind statement saying, I don't have anything that you can get to; but, here's what I have, and they're clearly below the exempt amounts. [LB384]

SENATOR CHAMBERS: And if that were... [LB384]

BOB HALLSTROM: And may take the case...or, the place, of a debtor's exam. [LB384]

SENATOR CHAMBERS: If that were what this bill said, then you wouldn't have any reason to be here objecting to that on behalf of the bankers? Or they would object to that, too? [LB384]

BOB HALLSTROM: Senator, I don't think, if it's in the context of eliminating the debtor's exam, that I would particularly have any concerns. I would probably still have some angst if it is still tied to the curtailment of the collection efforts, because I think in and of itself, if it has that, it's going to have the sum total. But the issue of the unintended consequences, of the potential ramifications of someone falsely filing the affidavit, becomes problematic. I saw your eyes roll into the top of your head. [LB384]

SENATOR CHAMBERS: I just came back to reality. [LB384]

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BOB HALLSTROM: Thank you. Thank you, Senator. [LB384]

SENATOR CHAMBERS: Now, I want to get away from Senator Lathrop's discussion about what could be contained in the affidavit, and get back to the debtor's exam. Would the bankers object to the elimination of the debtor's exam? [LB384]

BOB HALLSTROM: I don't think that we would get involved in that issue, Senator. [LB384]

SENATOR CHAMBERS: Okay. That's all I would have. [LB384]

BOB HALLSTROM: Thank you. [LB384]

SENATOR ASHFORD: Senator McDonald. [LB384]

SENATOR McDONALD: Just have a general question. Tell me, would a banker use a credit agency to go after a secured debt? [LB384]

BOB HALLSTROM: Not generally, Senator. If you have a secured debt and the value of the property is sufficient if sale occurs, then from the proceeds of the sale of the property you will presumably be paid in full for the amount of your outstanding indebtedness. So you should have no need. It's only when you are in an unsecured position or have procured a judgment in a situation where you did not have security and you've now become a judgment creditor, much like a retail business would that doesn't take security as a matter of course. And banks do make those types of loans. Smaller loans are generally unsecured, and so forth. [LB384]

SENATOR McDONALD: So what percentage would a bank...I mean, are you limited on the unsecured loans that you give? [LB384]

BOB HALLSTROM: No. [LB384]

SENATOR McDONALD: It's just whatever the banker thinks that...? [LB384]

BOB HALLSTROM: Banks will have policy, probably, as to the dollar value of loans that they would ever make on an unsecured basis. And obviously, prudent lending underwriting standards would dictate that when you have the ability to get security for a loan, that you prudently do so. [LB384]

SENATOR McDONALD: But some banks will do it without security, and in that situation,... [LB384]

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BOB HALLSTROM: Smaller loans. Smaller loans. You'll see a lot of times smaller home improvement loans may or may not involve a home equity position that's taken in smaller communities. Banks make a lot of \$500, \$750 loans to the individuals in their community that they do not take collateral for. [LB384]

SENATOR McDONALD: And would you hire a collection agency to go after \$700? [LB384]

BOB HALLSTROM: A bank may. They may. [LB384]

SENATOR ASHFORD: Thanks, Bob. [LB384]

BOB HALLSTROM: Thank you, Senator. [LB384]

SENATOR ASHFORD: Proponent...or, I'm sorry, opponents? [LB384]

DANA KAY FRIES: Good afternoon, Senators. My name is Dana Kay Fries, F-r-i-e-s, and I'm general counsel for a collection company in Nebraska. And I just actually came today to listen to the opponent testimony. And also, I'm not going to take up much of your time, but generally we would agree with everything that Mr. Heng had previously testified to, specifically talking...concerning the fact that it is my belief and my client's belief that the current Nebraska system already covers and protects the debtors with the hearings that they can request, particularly in garnishment or executions on their property. Listening to the testimony, I did hear quite a bit of talk concerning this debtor's exam. And I would say that a reason to have the debtor's exam, and the majority of the time that my client asks me to ask for a debtor's exam, is in the case where they...the debtor has fallen off the face of the earth. We know where they live, but have no idea what's going on with them, where they're working, what assets they may have. And that would be the reason why the debtor's exam is there, to bring them in and find out if they have the assets available to pay this debt back to the original creditor. That's all I would have. Yes. [LB384]

SENATOR ASHFORD: Okay. Any other questions? Just one quick question. But if they file...if they were to file an affidavit that had the basic information on it, in that...if they don't file that affidavit, potentially there could still be a debtor's exam, in my mind. But if they filed an affidavit which listed the property that normally would be the property that would be asked about in a debtor's exam, if they file that in this...if we expand the affidavit to include those things, what do you think about that? [LB384]

DANA KAY FRIES: I think that if the affidavit was conclusive enough to cover the majority, or 99 percent of the questions that are asked--and Pat can agree with me--we are there to find out whether they are working, in my client's case. [LB384]

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SENATOR ASHFORD: Right and you could ask that...you could have that in the affidavit, as to employment and the basic questions. [LB384]

DANA KAY FRIES: Correct. I think that is, obviously, the sole...almost, I'm not going to say the sole reason, but almost the sole reason for having a debtor's exam. [LB384]

SENATOR ASHFORD: Right. And so it would seem to me that we could shave off a lot of time in this whole debtor's exam process if somebody would file a comprehensive affidavit, let's say, under this statute with an amendment to it that would...it would seem to me that everybody's job would be a lot easier, and there would be protections, because there's a penalty for failure to file a truthful affidavit or whatever. [LB384]

DANA KAY FRIES: I think, if we're talking...if we're bringing back it back to the realm of, this is a debtor's exam issue, then I think if it was a more comprehensive affidavit, sure. But I believe as the statute is...or, the law is written now, it talks about ceasing all collection efforts, which...yeah. [LB384]

SENATOR ASHFORD: I understand that, but...okay. Thanks. Senator Chambers. [LB384]

SENATOR CHAMBERS: From the testimony...and I'm not going to take you through what I took the others through. That ground doesn't have to be rewalked. You said you agree with what Mr. Heng said. It's kind of interesting that his name is pronounced the way it was...that it is, even if it may not be spelled that way. But based on your agreeing with what Mr. Heng said--and you said you agree with all of it--there would be in the existing statutes...and I don't want to misstate it, so let me let you state it again. What is the contention relative to this that we're looking at in this bill interfacing with the existing law that you and he feel is already being covered so that this would be unnecessary? [LB384]

DANA KAY FRIES: I believe if you look at, particularly, 1552...Nebraska Revised Statute 25-1552 and Nebraska Revised Statute 25-1011, those have built into those--and they are particularly the execution statute and the garnishment statute--they have built into them the requirement that those...the judgment creditor provide to the judgment debtor their exemptions, and give them the tool to ask for a hearing to tell the judge and to tell the judgment creditor, I am on, let's use the example, SSI, or I have...I don't work, or I only work two hours a week, or whatever the case is, that my funds in some way are exempt. It's already built into that system. And according to those statutes, it requires the judgment creditor to provide that to the judgment debtor. We are already doing that. [LB384]

SENATOR CHAMBERS: If, then, this is redundant, and redundant means you're saying the same thing over again, why would you be here, and the others, opposing that which

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says what's already in the statute? If you're already doing it, what difference does it make if we do it again? [LB384]

DANA KAY FRIES: I think the majority of the issue, number one, is that it is redundant; but, two, that the way that the bill is currently, at least as I understand it, explained, is that no...collection efforts have to stop once they file that affidavit. Well, that prohibits us from...I'm sorry. [LB384]

SENATOR CHAMBERS: Okay, so then this is not redundant. This goes beyond the existing law, doesn't it, and that's what you're objecting to. [LB384]

DANA KAY FRIES: What I'm objecting to is the fact that we...again, it already...the statutes already provide access to the debtors to the courts to object to that. [LB384]

SENATOR CHAMBERS: No, let me ask the question so that you don't have to give that long explanation. And I'll make the questions short, following the lead of my colleague, Senator Lathrop. Does this bill go beyond what the current law provides, or does it not? [LB384]

DANA KAY FRIES: I think that it goes beyond by permitting the judgment debtor to file a piece of...an affidavit that... [LB384]

SENATOR CHAMBERS: Okay, the affidavit carries it beyond. [LB384]

DANA KAY FRIES: ...that is not comprehensive enough to cover other collection activities that are legitimate. [LB384]

SENATOR CHAMBERS: This bill, then, is not redundant, is it? [LB384]

DANA KAY FRIES: I think it's redundant in the fact that it...in the collection process,... [LB384]

SENATOR CHAMBERS: If it's something different from... [LB384]

DANA KAY FRIES: ...they're already given those opportunities to do that. So I'm not sure why we need to add another process that opens, as I heard the Bankers Association lobbyist talk about, the abuse process for this. [LB384]

SENATOR CHAMBERS: But what I hear from what you're saying is that this bill goes beyond the existing law. That's what I hear you saying. And if you're saying it does not go beyond the existing law, I don't even know what you're here for. So does it go beyond the existing law, yes or no? [LB384]

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DANA KAY FRIES: I would say, yes, I think it goes beyond existing law. Yes. [LB384]

SENATOR CHAMBERS: Okay. Thank you. That's all that I would have. [LB384]

SENATOR LATHROP: Maybe one point, if I can. I want a short...in this hearing, we're talking about the difference between a debtor's exam and an affidavit. As a matter of fact, when you file a bankruptcy, don't we essentially file an affidavit with the court in which the debtor lists all the assets, lists all the debts, lists all their income, the prospect of an inheritance? Those things are all put into an affidavit, and they are not subjected to a debtor's exam beyond that, are they? [LB384]

DANA KAY FRIES: No, because it's in the bankruptcy court, yes. [LB384]

SENATOR LATHROP: It's all in the affidavit. [LB384]

DANA KAY FRIES: Correct. [LB384]

SENATOR LATHROP: So we can cover it on a form. [LB384]

DANA KAY FRIES: Yes. [LB384]

SENATOR LATHROP: Okay. [LB384]

SENATOR ASHFORD: Thank you, Senator Lathrop. Thank you. [LB384]

DANA KAY FRIES: Thank you, Senator. [LB384]

SENATOR ASHFORD: Any neutral testifiers? Let's see. Senator Wightman is not here, so we'll move on to LB220. Senator Dierks. Thank you for... Welcome, Senator Dierks. [LB384 LB220]

SENATOR DIERKS: Thank you, Senator Ashford. This is really like old times. [LB220]

SENATOR ASHFORD: This is like old times. I always feel that way when I see... [LB220]

SENATOR DIERKS: Senator Ashford and members of the Judiciary Committee, my name is Cap Dierks and I represent District 40. You spell Dierks, D-i-e-r-k-s, and Cap is like you wear on your head. Today I'm introducing LB220. This bill would allow Nebraska chiropractors the right to file medical liens on judgments awarded to patients for repayment of medical treatment. Currently, physicians, nurses, and hospitals are allowed to file medical liens on any sum awarded or settlement agreed to by a patient. Nebraska is the only state in the union that does not allow chiropractors this right.

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Chiropractors were allowed to file medical liens and were paid the money due to them until 2000. The Nebraska Court of Appeals ruled in a court case called Nelsen v. Grzywa that chiropractors were not specifically mentioned in the statute governing medical liens whereas other healthcare professionals are specified. In addition, the Nebraska Supreme Court has also ruled in previous cases that chiropractors are not considered, quote, physicians, unquote, because they do not practice medicine and surgery and they do not attend an accredited school or college of medicine. Chiropractors attend an accredited college of chiropractic. The appellate court ruled that if chiropractors were to assert a valid lien under the physician lien statute the Legislature would have to change the statute. That is the purpose of LB220. Nebraska's chiropractors perform a necessary medical service especially to injured patients and should be included in Section 52-401 of the Nebraska statute. Thank you very much for your attention to this matter and I'll be happy to try to answer any questions for you. [LB220]

SENATOR ASHFORD: Thank you, Senator Dierks. My only comment, I agree with you, and I remember when we were here before that we expanded the role of chiropractors, didn't we? As I recall we gave them some additional scope of practice. And maybe some of the chiropractors will talk about that. [LB220]

SENATOR DIERKS: Yeah, there are a group here that will be discussing... [LB220]

SENATOR ASHFORD: As I recall, we did some work in that area. But I... [LB220]

SENATOR DIERKS: Yeah, I believe you're right, Senator. [LB220]

SENATOR ASHFORD: I appreciate that and I tend to agree with you. I have to listen to the hearing, of course, but I think it's a valid point. Thank you. [LB220]

SENATOR DIERKS: Am I done? [LB220]

SENATOR ASHFORD: You're done. [LB220]

SENATOR DIERKS: Thank you. [LB220]

SENATOR SCHIMEK: Hard to believe, isn't it. (Laughter) [LB220]

SENATOR ASHFORD: I didn't want to send you off unhappy so I thought I would tell you, but I'm only one vote and it's... [LB220]

SENATOR DIERKS: I'm very happy. [LB220]

SENATOR ASHFORD: I'm only one vote and not that persuasive, but...(laugh). [LB220]

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DOUGLAS VANDERBROEK: Good afternoon. I'm Douglas VanderBroek, and the spelling on the last name is V-a-n-d-e-r-B-r-o-e-k. I've been in practice as a chiropractor in Lincoln for 24 years. I'm also a member of the board of directors of the Nebraska Chiropractic Physicians Association. And just to briefly review why we are coming before the committee today with LB220, as Senator Dierks said to give a little further background, chiropractic was first licensed as a profession in the state of Nebraska in 1915. The lien law was originally written in 1927, and from that time until 2000 chiropractors' liens were honored just as they were for any health provider. In 2000 it was ruled in a court case that because the word chiropractor was not in the lien law the bill for a chiropractor patient's treatment in this specific case did not have to be paid by this insurance company even though in that case all the other health providers were paid. That decision was upheld by the Nebraska State Supreme Court, and so as a profession our only way to remedy this situation is through legislation. Now I'm not an attorney and don't play one on TV or anywhere else, and I understand there is lots of complications involved with the lien laws. The only thing I can speak from is my own experience of practicing for 18 years with a lien law and then about six years or so without a lien law. And there are some problems that have come up as a result of the court's ruling. You know, one of the most important parties that a lien protects is the patient. In an injury case, for example, many times the patient requires proper medical attention as soon as possible. And when we talk about injury cases I think one of the most common things we think of is vehicle accidents, but in a chiropractors' offices' injury cases, we see also this time of year slips and falls on the ice, a case where there is a wet floor in a grocery store, somebody slips and falls, sports injury on another property, things like that. With the protection of a lien, the patient can receive the care they need from the provider that they choose without having to worry about affordability in advance. It's also an issue of patient choice and that patient should be able to choose the type of care that has been effective for them in the past or that they feel will be at this point. Finally, chiropractic is licensed and regulated in all 50 states. Chiropractic bills are protected under the statutes of all 49 states except Nebraska. All health professions and providers in Nebraska, even auto mechanics and builders, are protected by the lien laws, so why not chiropractors? LB220 is just one word: chiropractors. We know there are a lot of other issues concerning liens. We don't have any opinion or stand or any of those other issues as an association. We're neutral on those others. So we ask that you just focus in on that one word, and that is "chiropractors." I would be happy to answer any questions that I can. [LB220]

SENATOR ASHFORD: I'm not at all sure we'll be able to focus only on that word, but, Senator Chambers. [LB220]

SENATOR CHAMBERS: Do chiropractors refer to themselves as doctors? [LB220]

DOUGLAS VANDERBROEK: Well, in the law there are three different terms that we

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always wrestle with, Senator. There is doctors of chiropractic, chiropractor, and physicians. The degree that we receive is DC, which stands for Doctor of Chiropractic. [LB220]

SENATOR CHAMBERS: And is that the same as the training that a medical doctor receives? [LB220]

DOUGLAS VANDERBROEK: I can only use for an example my brother is an internist. For his basic medical degree he and I attended the school the same amount of time but then he attended school in addition for his specialty in internal medicine, so it's the same amount of time. We had the same textbooks and everything. [LB220]

SENATOR CHAMBERS: But which school did you go to? [LB220]

DOUGLAS VANDERBROEK: I went to Palmer College of Chiropractic in Davenport, Iowa. [LB220]

SENATOR CHAMBERS: And where did your brother go to school? [LB220]

DOUGLAS VANDERBROEK: He went to Kirksville Osteopathic in Missouri--Kirksville, Missouri. [LB220]

SENATOR CHAMBERS: And he's an M.D.? [LB220]

DOUGLAS VANDERBROEK: He is a D.O. which practices basically as an M.D. and in addition they also learn manipulation. [LB220]

SENATOR CHAMBERS: But I don't want to be confused. He's a DO? [LB220]

DOUGLAS VANDERBROEK: He is a DO and that's a... [LB220]

SENATOR CHAMBERS: And what is that (laugh) because I just don't know? [LB220]

DOUGLAS VANDERBROEK: That's the third classification of physician. There are three classifications of physician oftentimes: medical, chiropractic, and osteopathic. And osteopathic physicians were not able to receive licenses in Nebraska for about a 15- or 20-year period and now as a result we have just a few osteopathic physicians. [LB220]

SENATOR CHAMBERS: But they're not medical doctors. They don't have a medical degree from a medical school, is that true? [LB220]

DOUGLAS VANDERBROEK: They don't have a medical degree. They operate in the same hospitals as medical physicians and clinics. [LB220]

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SENATOR CHAMBERS: But when you say operate, does that mean they can perform surgery? [LB220]

DOUGLAS VANDERBROEK: Yes. [LB220]

SENATOR CHAMBERS: Okay. Now, can a chiropractor perform surgery? [LB220]

DOUGLAS VANDERBROEK: No. [LB220]

SENATOR CHAMBERS: So how does a chiropractor qualify as a doctor? Does a chiropractor take enough courses to have an academic doctorate? [LB220]

DOUGLAS VANDERBROEK: An academic doctorate, I believe would be the... [LB220]

SENATOR CHAMBERS: I mean like a Ph.D. or something... [LB220]

DOUGLAS VANDERBROEK: ...be the equivalent or...I'm not sure of an academic doctorate. The chiropractic degree is four academic years after a bachelor's degree. It would be similar to Doctor of Dentistry, Doctor of Optometry, and similar to that. [LB220]

SENATOR CHAMBERS: Have you all got a theme song? [LB220]

DOUGLAS VANDERBROEK: We might need one but we don't have one. [LB220]

SENATOR CHAMBERS: I have a (inaudible)...Senator Schimek, leave me alone. Are there any procedures that can be performed that will paralyze a tongue, not loosen one but paralyze one? [LB220]

SENATOR SCHIMEK: (Laugh) [LB220]

SENATOR CHAMBERS: Okay. You all ought to do a version of the whole Rice Krispie song: Good Rice Krispies, snap, crackle, and pop. Have you heard that? [LB220]

DOUGLAS VANDERBROEK: I have heard of that. [LB220]

SENATOR CHAMBERS: I wrote a rhyme and if I can find it I'll share it with you. [LB220]

DOUGLAS VANDERBROEK: Okay. [LB220]

SENATOR CHAMBERS: That's all I have though. [LB220]

DOUGLAS VANDERBROEK: Thank you. [LB220]

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SENATOR ASHFORD: Yes, Senator McDonald. [LB220]

SENATOR McDONALD: To say what Senator Chambers said one step further when he asked if the chiropractors can perform surgery and you answered no: Can all medical doctors perform surgery? [LB220]

DOUGLAS VANDERBROEK: I can't speak for their profession but I believe they can. [LB220]

SENATOR McDONALD: Even if they are not schooled in surgery they can perform surgery? [LB220]

DOUGLAS VANDERBROEK: If they have the basic medical degree I understand they can perform surgery. [LB220]

SENATOR ASHFORD: I don't know (inaudible). That might be right, but, okay, thank you. [LB220]

DOUGLAS VANDERBROEK: Thank you. [LB220]

MARK WURTH: Good afternoon, Senators. My name is Mark Wurth. I'm a chiropractor from Omaha, Nebraska; that's W-u-r-t-h. I have practiced on 38th and Dodge for the last 23 years and am here in support of LB220. I think Dr. VanderBroek said the basic premise of our bill and I just want to offer one brief anecdote. Taking my daughter to school today, I was talking about our day and she was asking what I was going to do and I was trying to explain to her what I was going to do today. And by the time it took me to get from 120th and Blondo to 69th and Blondo, I did a rather poor job but she understood most of it. And her comment to me at the end of it was, what's the big deal, Dad? And I kind of agree with her. What's the big deal? Why aren't we included? And so what I would ask you today is to advance our bill because what's the big deal? [LB220]

SENATOR ASHFORD: Okay. That's a good one. Senator Chambers. [LB220]

SENATOR CHAMBERS: One question: Can a chiropractor join the AMA? [LB220]

MARK WURTH: No. [LB220]

SENATOR CHAMBERS: Okay. [LB220]

SENATOR ASHFORD: Any other? Senator McDonald? Any one? Your building is still standing, isn't it? [LB220]

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MARK WURTH: It is. [LB220]

SENATOR ASHFORD: Some of your building or buildings right around you aren't still standing. [LB220]

MARK WURTH: No, on 38th we're still...well, the one across the street was...yes. We were pretty happy about that actually. [LB220]

SENATOR ASHFORD: Yeah. I'm sure it is a good deal for you but it seems like there's a lot of the swath. Anyway, thank you. It has nothing to with anything. Thank you. [LB220]

MARK HANSSEN: My name is Mark Hanssen, M-a-r-k H-a-n-s-s-e-n. I too have been practicing chiropractic in the Papillion area for 18 years. I am president-elect of the Nebraska Chiropractic Physicians Association, and we represent 371, or 85 percent of all the practicing chiropractors in the state of Nebraska. I guess basically my purpose this afternoon is just to do follow-up on any questions and so forth that you may have. I think Senator Dierks, Dr. VanderBroek, and Dr. Wurth really presented it easily because it is a very simple bill--very straightforward. The emphasizing that it's patient, the whole bill was really...the whole lien is really designed to protect the patient, and so they do get the care on a timely basis. Patients who may be absent insurance, between insurance, many reasons why they may not have it, but the lien allows them to get timely and adequate care. So for 80 years that lien bill did just fine and then through a faux pas of a ruling in 2000 it was taken away. And the judge, even in his final comments, made a comment that, well, all you need to do is simply go back to the Legislature, get the word "chiropractic" inserted, and then everything will be fine. And so that's why we're here. We're simply requesting that the word "chiropractic" be added. And that's basically it if you don't have any questions. [LB220]

SENATOR ASHFORD: Thanks, Mark. Any questions? Senator Pirsch. [LB220]

SENATOR PIRSCH: Just briefly. You had mentioned that the ability to place a lien would mean that these individuals you said were injured would more likely receive care. Can you kind of explain (inaudible)? [LB220]

MARK HANSSEN: Yes. It adds a protection. If they don't have any insurance and they are protected by a lien which guarantees that payments will be made and... [LB220]

SENATOR PIRSCH: Does that mean you have the ability then to go to the insurance company...that an insurance company stands behind it, in your mind? [LB220]

MARK HANSSEN: Yes, they would, and they had prior, like I say, to 2000. Yes, that was just...if you had a lien rights then your ability, yes, to treat the patient and be

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compensated for that was guaranteed by law by that. [LB220]

SENATOR ASHFORD: Any other questions? Yes, Senator Chambers. [LB220]

SENATOR CHAMBERS: I have no idea what you and Senator Pirsch just talked about so explain that to me how the lien against the patient's property protects the patient. [LB220]

MARK HANSSEN: No. The lien is filed with the insurance company, the responsible insurance company. [LB220]

SENATOR CHAMBERS: So you don't file a lien against anybody's property. [LB220]

MARK HANSSEN: No. [LB220]

SENATOR CHAMBERS: Well, if the person has no insurance what do you file it against? [LB220]

MARK HANSSEN: If they have no insurance and have no lien... [LB220]

SENATOR CHAMBERS: And you treat the person anyway. [LB220]

MARK HANSSEN: Ah, well,... [LB220]

SENATOR CHAMBERS: Don't hesitate. You answered those other questions very quickly. Do you tend to treat people who have insurance more quickly than you would somebody who has no insurance? [LB220]

MARK HANSSEN: Well, I can tell you that there are certain instances because a chiropractic office is a small business. You know, we have staff; we have overhead; we have rent. So we have obligations to pay. [LB220]

SENATOR CHAMBERS: I understand. [LB220]

MARK HANSSEN: So when you look at it from a business aspect and you have obligations... [LB220]

SENATOR CHAMBERS: If they don't have insurance they're not likely to get treatment. Well, in that...since you are just like other doctors. But from what I gathered and I wanted to hear you out, a person with insurance is more likely to be able to get treatment from you, isn't that true? Just level with me. You know whether it's true or not. We're going to conclude it's true regardless of what you say. [LB220]

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MARK HANSSEN: Well, it is obvious. A patient, yes, who has...if I'm going to put...when I take a patient as a client it takes my time. It takes... [LB220]

SENATOR CHAMBERS: You don't have to say all that. You can answer yes or no. If somebody... Okay, Mr. A has insurance; Mr. B does not have insurance. Which of the two is more likely to be treated by you? [LB220]

MARK HANSSEN: I will treat Patient B as readily and as easily as Patient A, however if there are a multitude of Patient Bs that show up in a time frame where it may affect my ability to pay my debts... [LB220]

SENATOR CHAMBERS: I'm not condemning you. I just want an answer... [LB220]

MARK HANSSEN: That's an answer. [LB220]

SENATOR CHAMBERS: ...so I'll give it to you. A person with insurance is more likely to receive treatment than one without insurance. [LB220]

MARK HANSSEN: In general, yes. I'm talking specifically my office. [LB220]

SENATOR CHAMBERS: Okay, and that doesn't make you a criminal. I was just asking. [LB220]

MARK HANSSEN: Yes. [LB220]

SENATOR CHAMBERS: So now we can get to the other question. If there is no insurance then there is no lien, correct? [LB220]

MARK HANSSEN: If there is no other insurance... [LB220]

SENATOR CHAMBERS: Okay. And there is nothing else that this that you're seeking would allow a chiropractor to place a lien against, is that true? Only insurance. Don't be looking at him. Don't you be coaching him. [LB220]

SENATOR ASHFORD: I'm giving him a little...it's sort of like that thing where you pick the...were you have the three thimbles and you pick out the blue jay, and we're helping him. [LB220]

SENATOR CHAMBERS: Okay. So, okay, go ahead and coach him and I'm going to look down here and then I'm going to ask him the question again. Have you coached him? [LB220]

SENATOR ASHFORD: Well, no. I was just...I might follow up. I mean, this is a lien that

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applies only to insurance. It doesn't apply to any other asset. [LB220]

MARK HANSSEN: Correct; correct. It applies to the party that is responsible. [LB220]

SENATOR ASHFORD: Insurance. [LB220]

MARK HANSSEN: Yeah,... [LB220]

SENATOR ASHFORD: To their insurance. And they give you the insurance information and that's where the lien applies, is that right? [LB220]

MARK HANSSEN: Correct; um-hum. [LB220]

SENATOR CHAMBERS: And it doesn't apply to anything else? [LB220]

SENATOR ASHFORD: It would not be a lien against their house or their car or their bank account. [LB220]

MARK HANSSEN: Personal property; none of that, no. Hum-um. No. [LB220]

SENATOR CHAMBERS: So if we don't have insurance then we have no application of this law as far as the lien, true? [LB220]

MARK HANSSEN: Yeah. If no insurance is in the picture, correct. [LB220]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LB220]

SENATOR ASHFORD: I think that's right. Go ahead. [LB220]

SENATOR LATHROP: Just briefly, and I should say that I've dealt with your office before. You guys do a great job and I appreciate what you've done for people that I have represented along the way. I have a question and it's not directed because I think you are a part of this problem, but one of the concerns that I have that I see, obviously I'm doing the kind of practice that interfaces with the chiropractors a lot as a lawyer. We have had clients who have been involved in accidents and now they're getting calls from chiropractors on the telephone to come in like it's 7 o'clock the morning after an accident. Are you familiar with these guys? [LB220]

MARK HANSSEN: Absolutely. [LB220]

SENATOR LATHROP: Two or three or them in Omaha? [LB220]

MARK HANSSEN: Or more. [LB220]

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SENATOR LATHROP: And they represent to the people that they'll be no charge to them for coming in. [LB220]

MARK HANSSEN: Correct. [LB220]

SENATOR LATHROP: And in fact they charge them and then try to bill it against the med pay or something like that. [LB220]

MARK HANSSEN: You know, I don't know all the specifics but it's probably something like that; yes. [LB220]

SENATOR LATHROP: Okay. And my question, as long as I have you here and you may have the answer for me: Is your organization doing anything about these people? [LB220]

MARK HANSSEN: Absolutely. [LB220]

SENATOR LATHROP: What is happening? [LB220]

MARK HANSSEN: Well, that is restricted information, not even...there is a certain section of our board who is responsible for that, and because legal actions are in process and their names and so forth, the rest of the board is not privy to that. [LB220]

SENATOR LATHROP: If we allow a lien for chiropractors, these people that call folks on the telephone the day after a car wreck and solicit them and use methods that you and I both aware of which are not exactly truthful and straightforward, they're going to benefit from the lien, as well? [LB220]

MARK HANSSEN: Quite possibly. But what I wouldn't want to do is burn down a house to kill a rat. In other words, I...having the lien to apply to 99 percent of the chiropractors doing it correctly would be the thing to do. And as these other surface that are doing it incorrectly, immorally, illegally, they need to be taken care of through the legal system, and they are being handled that way. So I wouldn't let the situation that you are bringing up be the impetus behind not having a lien because I think it's overkill, because it penalizes those that are doing it correctly. And I assure you, and I absolutely assure you, because this comes up and this is a huge bone of contention with Dr. Wurth every meeting we have. He has got his finger in the chest of the individuals...because it looks bad on all of the chiropractors in Omaha because we get patients coming in saying, you know, I was in an accident and I got 15 calls from these chiropractors and so forth; what are you guys doing about it? And I assure that Dr. Wurth will absolutely not let it rest. The pressure is on those people. [LB220]

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SENATOR LATHROP: One of them is right down the street from him, right? [LB220]

MARK HANSSEN: Yeah. You know, I know the names, you know. [LB220]

SENATOR LATHROP: Okay. That's all right. I'm not implicating him. I also know Dr. Wurth's office and they are straightforward people. [LB220]

MARK HANSSEN: Okay. But I assure you it's absolutely being taken care of. The unfortunate thing, and I won't belabor this but part of the problem is some of those calls from out of state. And I'm not an attorney but it has to do with interstate laws and who can call. And the jurisdiction now is not Nebraska and just a lot of things like that, that are really...they are stumbling blocks but we're working through them because it really doesn't look good for us. [LB220]

SENATOR LATHROP: I don't want to take up everybody's time with that question, but I appreciate (inaudible). [LB220]

MARK HANSSEN: No, that's a good point. No, that's a good point though. [LB220]

SENATOR ASHFORD: Thank you, Mark. Any other questions? Thank you. [LB220]

MARK HANSSEN: Thank you. [LB220]

SENATOR ASHFORD: Any opponents? Neutral? Opponent? Opponents? This is brother day, I can see. We've got brothers all over the place here. (Laugh) [LB220]

MATTHEW LATHROP: Good afternoon. My name is Matt Lathrop. I'm here on behalf of the Nebraska Association of Trial Attorneys. And rather than go through all of my prepared remarks what I would like to do is say NATA and I as a lawyer who do practice in this area, we come in opposition to the amendment not because the chiropractors are bringing it. For instance, if the physician therapists were here with the amendment we would have the same objection, and that is that the law itself, 52-401, doesn't work, and it works against our clients. And any expansion of the law in any form must expand the problem that we have with...for our clients. A couple of things I did want to clear up. The question about there being a lien on property, this is a lien and gives anyone who holds these liens, a lien on property. If there is a private pay situation where my client is hit by Warren Buffett, it is a lien on my client's interest in recovering. And so if my... [LB220]

SENATOR ASHFORD: But not on his or her other assets. [LB220]

MATTHEW LATHROP: Not on my client's personal assets, their home or their car; that's true. But I think it's important to clear up that it's a...if I wanted to take Warren Buffett's car,... [LB220]

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SENATOR ASHFORD: Right. It's his interest--his or her interest. [LB220]

MATTHEW LATHROP: Right. It's his interest in that asset. Right. Again, we...the reason we are opposing it is because the problem that the current law results in with our clients, this will just expand that. If we allow every healthcare provider in, we have those problems. And let me also offer this, that currently, at least with me and with my office, the system as it is with chiropractors...and I don't want to speak for the other lawyers that these good doctors are working with because they may have problems with other lawyers. But in my office the system is working, and that is in those cases where my client isn't fully compensated for his or her injuries and we have to have a compromise settlement either because there is a liability problem or because there is a problem with proving that the injuries are related to the wreck, we can resolve that on a compromised basis and then pick up the phone and talk to the doctor, the chiropractor, and say here is the situation we were in. We couldn't prove that all of the care that our client received from your office was related to the accident and therefore we're looking for you to kind of participate in the hurt here. I'm going to take a smaller fee; my client is going to recover less than their full damages; and we would like you to participate in that and take less than your full bill, not because we don't think you didn't provide value but because we're all sharing in the risk. If we don't share in the risk then I have to go try this and we could all end up with nothing. And the way we deal with chiropractors in my office and me personally with these doctors here, I've dealt with both of them, they understand that and they will say, yes, I understand I will work with you and I will compromise my lien or my right to recovery. Even if I don't have a lien and I call them and I talk to them. Even though I don't have a lien, I'll compromise with you because I understand. But I don't get that same courtesy when I call up a neurosurgeon or when I call up a hospital or I call up a doctor's office. I get, no, you've recovered; we have a lien; we get paid. And then the final insult is that... [LB220]

SENATOR ASHFORD: Well, you never get to talk the...when you call the hospital or the neurosurgeon. (Laugh) [LB220]

MATTHEW LATHROP: Well, that's true. I mean, depending on the place or the size of the place, we don't get anywhere close to talking to the doctor who might be more sympathetic. But I also deal with their business offices, both of these doctors, because they have competent, good staff in their business offices. [LB220]

SENATOR ASHFORD: Right. And I... [LB220]

MATTHEW LATHROP: Yeah. And the...finishing this idea though was that the final insult is that when I have to pay this hospital back 100 percent to their lien, the hospital then forces my client to pay the attorney's fee for collecting that marked-up price, that 100-percent price. They don't participate in even the attorney's fee for collecting what

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the hospital recovers. And so again it isn't because it's chiropractors; it's because this lien law as it is, 52-401, just causes so many problems with our clients paying off their bills in those compromised situation. The lights aren't changing but I'm assuming I've gone probably three minutes. If there are any questions I'd be happy to answer them. [LB220]

SENATOR ASHFORD: Aren't you doing the light anymore, Stacey? [LB220]

MATTHEW LATHROP: Okay. She's staring at me. I get the same look at home. [LB220]

SENATOR ASHFORD: I guess you...(laugh). Oh, my goodness. Well, yes, the three minutes is long gone, Matthew. [LB220]

MATTHEW LATHROP: Right, I believe it. [LB220]

SENATOR ASHFORD: Senator McDonald. [LB220]

SENATOR McDONALD: Can attorneys file liens? [LB220]

MATTHEW LATHROP: We can. There is an attorney's lien statute; yes. [LB220]

SENATOR ASHFORD: Hum. I understand your point. I just...I can understand why the chiropractors would like to have the same protection. [LB220]

MATTHEW LATHROP: And I can understand that too. Yes, Senator. (Laugh) [LB220]

SENATOR LATHROP: Well, you know, this isn't a rehearsed thing even though we're family... [LB220]

SENATOR ASHFORD: Don't soft-ball it. [LB220]

SENATOR LATHROP: ...but I want to ask you, would NATA drop its opposition to placing the chiropractors into the lien statute if the lien statute that the amendment, which I think we heard a moment ago which was... [LB220]

MATTHEW LATHROP: AM586? [LB220]

SENATOR LATHROP: ...AM586, if that were the state of the lien law. Do you know that? [LB220]

MATTHEW LATHROP: I don't know that. I would expect that we'd have less resistance to it. We would sure like to see something in there that requires all of these providers to participate in our client's cost for collecting the debt. But I think that's something I can

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take back to the committee and ask them, and I'd be happy to. [LB220]

SENATOR LATHROP: Okay. Thank you. [LB220]

MATTHEW LATHROP: Yes. [LB220]

SENATOR PIRSCH: Just one quick question. This was, up until 2000, chiropractors were able to assess (inaudible), right, interest only? [LB220]

MATTHEW LATHROP: True. [LB220]

SENATOR PIRSCH: Have you seen any significant differences since that point in time, 2000? In 2001? [LB220]

MATTHEW LATHROP: And here's what I am going to do. I'm not going to speak for all lawyers handling injury cases because I don't know if they have taken advantage or abused the change in the law. But here's what I know about my own office and many of the members of the NATA group to which I belong: There has been no change in the way I deal with the doctors. I get letters from chiropractors, frankly, who don't know there has been a change in the law and I include those in my file just the same as medical liens. I don't have to and I know I don't have to pay those doctors, but, frankly, in the line of work that I'm doing these doctors are often treating my clients. And it may benefit Senator Pirsch in his case that I stiff the chiropractor, but when Senator McGill comes in to see me and has the same chiropractor treat with me, that chiropractor is going to know that I'm not somebody they can deal with. And so I'm cutting off my nose to spite my face if I do you a favor as a client and then all my other clients suffer for it. So there hasn't been a change in my practice. What I will say though is that I know when I pick up the phone and I talk to these business offices at chiropractors, I can explain to them the problems with my case and I don't get the statute jammed in my ear; I get someone listening to reason. And that's not the case with some of these business offices. Did that answer your question? [LB220]

SENATOR PIRSCH: Yes. [LB220]

MATTHEW LATHROP: Okay. Sorry. [LB220]

SENATOR ASHFORD: Senator McDonald. [LB220]

SENATOR McDONALD: You don't know if you're an exception or you are the norm as far as dealing with the chiropractors in the way that you do? [LB220]

MATTHEW LATHROP: No, I don't. You know what I would say? I think the chiropractors would be better able to tell if there has been a big change, because there hasn't been a

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change in my office with the people that I work with; no. But I think you're right; I think that's fair. [LB220]

SENATOR McDONALD: But you're just one office. [LB220]

MATTHEW LATHROP: That's right. We're eight lawyers but one office. [LB220]

SENATOR ASHFORD: Thanks, Matt. Thank you. Any other opponents? Neutral? Senator Dierks, do you wish to close, or...? [LB220]

SENATOR DIERKS: Very briefly. I just am looking for equity. We have medical health professionals that are treated differently and I think we shouldn't have that. I think the chiropractors...I have a great deal of respect for them. My wife's brother is a chiropractor and he's got two sons that are chiropractors. They live in Kansas and they have an outstanding chiropractic practice down there. They refer to medical doctors and medical doctors refer to them, and they do that a great deal in Kansas and I'm very proud of that. I think that they both serve a very great purpose in treating health needs of our citizens, and why should they be treated differently as far as the liens are concerned? That would be my plea. Any questions? [LB220]

SENATOR ASHFORD: Thanks, Senator Dierks. Appreciate it. Yes, Senator Chambers. [LB220]

SENATOR CHAMBERS: I didn't get to ask Mr. Lathrop this question because I didn't know there were eight lawyers in his firm, but I'm going to ask you the question that Groucho Marx asked a lawyer who sent him a letter on letterhead, and it had about 20 lawyers. And he asked, does each lawyer have his own safe? So I'm wondering, what do you think about that? Do you think they all have their own safe? [LB220]

SENATOR DIERKS: I think everybody ought to have their own safe, Ernie...Senator Chambers; excuse me. [LB220]

SENATOR CHAMBERS: That is so diplomatic. Thank you. That's all I had. [LB220]

SENATOR ASHFORD: Thanks, Cap, very much. [LB220]

SENATOR DIERKS: You bet. Thank you all. [LB220]

SENATOR ASHFORD: Senator Pirsch, it's finally,...your time is finally here. LB618. LB618. And I believe you have the next three bills. Is that right? [LB618 LB619 LB620]

SENATOR PIRSCH: Yeah. And if...with your...we'll go ahead and address all three at once? Is that what you're planning? [LB618 LB619 LB620]

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SENATOR ASHFORD: That would be great. Why don't we do it that way. Is that all right with you, Senator Chambers? The witnesses are okay with that, Senator Pirsch? Is that...? [LB618 LB619 LB620]

SENATOR PIRSCH: I believe so, addressing all three at once. Yeah, that's fine. [LB618 LB619 LB620]

SENATOR ASHFORD: Okay. Thanks. Go ahead. [LB618 LB619 LB620]

SENATOR PIRSCH: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Pete Pirsch. The last name, for the record, P-i-r-s-c-h. State senator from Legislative District 4 in west Omaha. And I am the sponsor of three bills here: LB618, LB619, LB620. And for efficiency's sake, they all pertain to the same common topic, or closely related. So I thank the Chairman for allowing me to have all three considered at the same time. Let's start in numerical order. LB618 provi..and these all pertain to the State Treasurer's Office. LB618 provides that the State Treasurer may collect a fee electronically or by other means equal to the cost of processing any payments for returned check charges or charges for electronic payments not accepted. The bill also specifies that the fee shall be remitted to the Treasury Management Cash Fund and shall be used to offset the cost incurred from the collection of bad debt incurred by state agencies. The bill also allows the State Treasurer to maintain a bad debt database, and provides that after a payer has originated two bad debt payments to the state in the period of one year, the state may then refuse to accept future payments by check, and may then require a money order, cash, a cashier's check, or a certified check for payment. LB619 provides that at any time the State Treasurer assesses a returned check charge or a charge for an electronic payment that is not accepted against a state agency, the agency may then pass that cost along to the payer of the check or the person who authorized the electronic payment. The charges assessed by the state agency shall be used to make payment to the State Treasury and to reimburse the state agency for the assessments and any administrative costs incurred by the agency. The bill also provides that any charges collected by the State Treasurer shall be credited to the Treasury Management Cash Fund and shall be used to offset the expenses incurred in the collection of state agency bad debt. LB620 provides that payer...that rather than a payer issuing three payments resulting in check charges or electronic payments not accepted to the State Disbursement Unit, the Child Support Processing Center, the payer may now issue only two payments resulting in returned check charges or electronic payments not accepted before the payer is required to pay all future payments by money order, cashier's check, or certified check. Additionally, this bill designates a place for the fees collected for returned check charges to be remitted, which is the State Disbursement Unit Cash Fund, created under this bill. It designates that the funds collected in the SDU Cash Fund shall be used to offset expenses incurred in the collection of child support bad debt. The bill also mandates that the State

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Disbursement Unit, or SDU, must use automated procedures, electronic processes, and computer-driven technology, to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments. Finally, LB620 provides that if an employer has more than 50 employees and has an employee with a child support order, then the employer shall remit their child support payments electronically. I anticipate there's going to be testimony here today from a number of...from the State Treasurer and from a number of his employees. And they'll probably do a better job explaining the details than I can. But if there is any questions you have at this time, I'd be happy to try to take a stab. [LB618 LB619 LB620]

SENATOR ASHFORD: Though there is a question, I think. Senator Chambers. [LB618 LB619 LB620]

SENATOR CHAMBERS: Senator Pirsch, in LB...and somebody coming after you can answer, but I want to put it. In LB618, there's no reference...oh, wait a minute. Okay. In LB618, in line 2, the cost...the fee shall be equal to the cost of processing any payments. So we know that they're not going to get anything beyond the cost. And in LB620, it says specifically, a fee equal to the actual cost. In LB619 it says, the fee shall approximate the cost of providing the service. I would like it to use that language that's in LB620, which says, a fee equal to the actual cost of processing, and I would like that to be in all three of them. [LB618 LB619 LB620]

SENATOR PIRSCH: Okay. And I'll...it would probably be best for me to defer that particular question as to the language there, to them. But... [LB618 LB619 LB620]

SENATOR CHAMBERS: Right, but I wanted them to know what it is that I'm looking at,... [LB618 LB619 LB620]

SENATOR PIRSCH: Sure. You bet. [LB618 LB619 LB620]

SENATOR CHAMBERS: ...so they don't have to go through everything else in the bill for my benefit. [LB618 LB619 LB620]

SENATOR PIRSCH: I appreciate that. Yeah, absolutely. Absolutely. [LB618 LB619 LB620]

SENATOR CHAMBERS: Okay. [LB618 LB619 LB620]

SENATOR PIRSCH: Was there any...? [LB618 LB619 LB620]

SENATOR ASHFORD: Thanks, Senator. Thanks, Pete. Yeah. They're all three together, Senator Schimek. Mr. Treasurer, welcome. [LB618 LB619 LB620]

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SHANE OSBORN: Thank you, Chairman Ashford and members of the committee, for allowing me to be here today. And Senator Chambers, I'll address your issue after I read my testimony here, and then we can discuss that, as well. And I think some of this will explain a little bit of that answer you're looking for. I come before you today in support of three bills, LB618, LB619, and LB620, all of which were brought to you by Senator Pirsch from our office, which he kindly introduced for us. A bit of background on how we came to this point. I took office on January 4, sat down with my division managers, and asked them what legislative changes they needed in order to improve the way business is run in the Treasurer's Office. They looked at their practices and found ways to bring more efficiency to state government and to save the state some money. You all know how the legislative process works and that bills need to be introduced in the first ten days. Needless to say, we had about a week to evaluate all of our programs, and are aware that some of the language before you may need some tweaking. So, Senator, that kind of addresses what you had as far as a question on the difference between the three bills. We're more than happy to work with the committee, and would be happy to address any concerns you might have. That being said, I want to begin with LB618, which would allow the State Treasury staff to work with state agency programs to collect returned check charges and charges for electronic payments not collected electronically via the Automated Clearing House, ACH, network. State Treasury staff currently collects eligible returned bad debt items by electronic debit, but are unable to recoup the cost of the administrative expenses. Bad debt items eligible for electronic collection include, one, items in less than the amount of \$2,500, is drawn on a consumer account, and has been previously presented and returned, either nonsufficient funds, insufficient funds, noncollected funds, or comparable language. The Director of Treasury Management, Michelle Raphael, is here to testify following me, and she will explain that in more detail. LB619 is merely a clarification of the existing statute, 84-617. This legislation speaks to the ability of state agencies to assess a charge to the payer of a returned check or electronic payment that is not accepted. Again, Michelle will explain this bill and why it is needed. Finally, LB620 is a bill that relates to one division of our office, specifically, the Child Support Payment Center, also known as the State Disbursement Unit, or the SDU. Basically, this bill makes a change that says rather than a payer issuing three payments resulting in returned check charges or electronic payments not accepted to the State Disbursement Unit, the payer may now only issue two payments resulting in returned check charges or electronic payments not accepted. After that, the payer will be required to pay all future payments in guaranteed funds. This bill also mandates that the SDU must use automated procedures, electronic processes, computer-driven technology, to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments. Finally, LB620 provides that if an employer has more than 50 employees and any one of those employees has a child support order, that employer shall remit their child support payments electronically. Over time, this could drastically and dramatically decrease the amount of paper warrants coming into the SDU, freeing up valuable time and resources. I'm very excited about these two provisions in the legislation encouraging a move away

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from paper warrants to electronic payments. Let me just share with you a fact that I learned when preparing to take office. At the state level, it costs approximately 59 cents per paper warrant issued. If these payments went out electronically, our cost currently for this month would be 4 cents. We've renegotiated the contract; we'll be signing it next month. It's going to go down to a penny per transaction. This bill helps the Treasurer's Office move in a direction towards electronic payments, resulting in significant savings to the Nebraska taxpayers. And with that, I'd be happy to answer any questions you may have. [LB618 LB619 LB620]

SENATOR ASHFORD: Any questions of Shane? Yes, Senator Schimek. [LB618 LB619 LB620]

SENATOR SCHIMEK: Yes, Mr. Chairman. I apologize for being absent during the opening by Senator Pirsch. So my questions are just because I'm not quite understanding what you want to do in LB620. Would you explain to me the three payment, two payment part of this bill once again? And then also, I want to know why we are...why fees are being remitted for credit to the State Disbursement Unit Cash Fund which is hereby created? Why do we need this fund, is what I'm asking. [LB618 LB619 LB620]

SHANE OSBORN: What this fund would do is, it takes a place where we obviously use a lot of manpower to try and collect on bad checks, and this takes those fees that we would collect, a reasonable fee, probably about \$20 for someone that writes a bad check, and put it back in this fund to help cover those costs incurred. This bill is basically in place...as far as two payments versus three, the problem we have right now is, we're federally mandated, within two business days, to turn these checks around and get this money to the custodial parent. So what we do is, we receive a check, it hasn't necessarily cleared the bank yet, and we're sending this money out to the custodial parent prior to knowing whether this check has cleared. So that results...right now, we have about \$580,000 in uncollected...in debt in this office. The other problem we...that forces us is, if we do have a chronic bad check writer, we then take this check, and we know it might be bad, so then we wait for it to clear the bank. Well, that takes eight business days, and now we've held up that custodial parent from getting the money. That's where electronic payments both ways can help speed this process up. It makes it an immediate...the next business day, these people have this money in their account, or on their ReliaCard, in order to get the custodial parents their money quicker and cut our administrative cost down very significantly. [LB618 LB619 LB620]

SENATOR SCHIMEK: So basically, you're not getting any fees right now? [LB618 LB619 LB620]

SHANE OSBORN: There are some instances where we get fees. [LB618 LB619 LB620]

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SENATOR SCHIMEK: What do you do with them now? [LB618 LB619 LB620]

SHANE OSBORN: There is no direction. That's why we wanted to clarify it, just to make sure that it's covered in statute what these fees are applied towards, because right now, if we collect a fee, there's nothing that tells us what we can do with that fee. And so that's we hope this legislation solves. [LB618 LB619 LB620]

SENATOR SCHIMEK: Okay. And then I hope there's only one further question. [LB618 LB619 LB620]

SHANE OSBORN: Sure. [LB618 LB619 LB620]

SENATOR SCHIMEK: But it says that these monies may be invested by the Investment Officer. Are you talking a lot of money here? You said it was, like, \$20 of... [LB618 LB619 LB620]

SHANE OSBORN: No, we're not talking a lot of money. That just follows state statute with the... [LB618 LB619 LB620]

SENATOR SCHIMEK: That all of the...okay. [LB618 LB619 LB620]

SHANE OSBORN: That all the others...that's all part of those bills. [LB618 LB619 LB620]

SENATOR SCHIMEK: That's what I thought, but... [LB618 LB619 LB620]

SHANE OSBORN: No, we didn't add that in. That's just a requirement. [LB618 LB619 LB620]

SENATOR SCHIMEK: ...I wanted to clarify. [LB618 LB619 LB620]

SHANE OSBORN: No, it wouldn't be a large amount of money. [LB618 LB619 LB620]

SENATOR SCHIMEK: Okay. [LB618 LB619 LB620]

SHANE OSBORN: Just, you know, for an example, you know, electronically, with the checks we send out, if we were to go to complete electronic payments towards the custodial parents, we'd save about \$300,000 a year. So it's a significant amount of money if we can force this electronically. [LB618 LB619 LB620]

SENATOR SCHIMEK: Okay. Thank you. [LB618 LB619 LB620]

SENATOR ASHFORD: Yes, Senator Chambers. [LB618 LB619 LB620]

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SENATOR CHAMBERS: If the payment is made electronically, tell me how that parent receives this electronically transmitted money. [LB618 LB619 LB620]

SHANE OSBORN: Okay. Sure. Absolutely. One, if they have a banking/checking account, savings account, it can go directly into that. [LB618 LB619 LB620]

SENATOR CHAMBERS: But if they don't have that? [LB618 LB619 LB620]

SHANE OSBORN: If they don't, we have a ReliaCard program through U.S. Bank, which is basically a Visa check card. That person, if they are...a lot of people aren't bankable. If they aren't eligible to get an account, we have this card. There's no fees to have this card. They can access it over the phone, online, to see what the balance is. They're given two ATM withdrawals a month, free of charge. And they can also use it just like a regular Visa card. It's nothing that says "state disbursement card" or anything like that. It's just a regular Visa card and they can use it anywhere credit cards are taken, as well. So it allows for that provision if somebody doesn't have a checking or a savings account. [LB618 LB619 LB620]

SENATOR CHAMBERS: Has anybody complained about receiving the money in this form, rather than cash? [LB618 LB619 LB620]

SHANE OSBORN: Absolutely not. It cuts down the time. [LB618 LB619 LB620]

SENATOR CHAMBERS: Okay. [LB618 LB619 LB620]

SHANE OSBORN: You're looking at issuing a paper warrant, the time it takes to issue that warrant, the time it takes it to get out in the mail and then received, then they've got to take that warrant...it may take a couple days in the mail, it gets there, and then they've got to deposit it in their checking account, wait for it to clear. We just cut all that process out. [LB618 LB619 LB620]

SENATOR CHAMBERS: Well, when you said "no," that answered my question. (Laughter) [LB618 LB619 LB620]

SHANE OSBORN: Okay, good. Sorry, I didn't mean to be verbose. [LB618 LB619 LB620]

SENATOR CHAMBERS: No, that's okay. [LB618 LB619 LB620]

SENATOR ASHFORD: It is getting late, but I...that's a great idea. Is the card new? [LB618 LB619 LB620]

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SHANE OSBORN: It's been around for a few years. [LB618 LB619 LB620]

SENATOR ASHFORD: It has been? [LB618 LB619 LB620]

SHANE OSBORN: We're really expanding it. We were kind of the test base. And Michelle Raphael, my Director of Treasury Management, can expand on that if you'd like her to, but it's a great program, and it's no fees to the consumer. [LB618 LB619 LB620]

SENATOR ASHFORD: And how many of your...how many of the recipients...? [LB618 LB619 LB620]

SHANE OSBORN: About 5,000 right now. [LB618 LB619 LB620]

SENATOR ASHFORD: Five thousand people? [LB618 LB619 LB620]

SHANE OSBORN: Five thousand custodial parents. [LB618 LB619 LB620]

SENATOR ASHFORD: And what's the total number of custodial parents, just generally, that your...? [LB618 LB619 LB620]

SHANE OSBORN: Michelle can answer that better. I'm not certain. [LB618 LB619 LB620]

SENATOR ASHFORD: Just...you can say... [LB618 LB619 LB620]

TROY REINERS: I would be able to answer (inaudible). [LB618 LB619 LB620]

SHANE OSBORN: Yeah, or Troy, our director of... [LB618 LB619 LB620]

SENATOR ASHFORD: Or somebody can say it right now, or... [LB618 LB619 LB620]

TROY REINERS: Basically, you're looking at about 76,000 to 80,000... [LB618 LB619 LB620]

SHANE OSBORN: Sure. [LB618 LB619 LB620]

SENATOR ASHFORD: Okay, and you want to expand that program to as... [LB618 LB619 LB620]

TROY REINERS: Our penetration with the card is right at about 9 percent right now. I mean... [LB618 LB619 LB620]

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SENATOR SCHIMEK: Mr. Chairman, for the record,... [LB618 LB619 LB620]

SENATOR ASHFORD: I know. I know. I just was...just, I was...I want it on the record.
[LB618 LB619 LB620]

SHANE OSBORN: I can reiterate it. There's about 75,000 to 80,000, Mr. Chairman.
[LB618 LB619 LB620]

SENATOR SCHIMEK: Thank you. (Laugh) [LB618 LB619 LB620]

SHANE OSBORN: And we have about a 80 percent penetration rate. [LB618 LB619
LB620]

SENATOR ASHFORD: Thank you, Senator Schimek. I needed that. I just really wanted
to know right that second. Thanks, Shane, very much. [LB618 LB619 LB620]

SHANE OSBORN: All right. Thank you. [LB618 LB619 LB620]

MICHELLE RAPHAEL: (Exhibit 5) Thank you, Senator, members of the committee. For
the record, my name is Michelle Raphael, R-a-p-h-a-e-l, and I'm the Director of Treasury
Management in the State Treasurer's Office. I come before you today to give you more
detailed background on LB618 and LB619. As Treasurer Osborn explained, LB618
would allow State Treasury staff to work with state agency programs to collect returned
check charges and charges for electronic payments not collected electronically via the
Automated Clearing House Network. Currently, Treasury staff have two agencies that
volunteer to participate in a program to collect insufficient fund items electronically.
Those agencies are Nebraska Game and Parks and UNL. The program has allowed the
Treasurer's Office to collect 52 to 57 percent of eligible items for collection, and 35 to 48
percent of the dollar amount eligible for collection with no agency involvement. From
January 1, 2006, through December 31, 2006, the state was charged back for 1,473
returned checks, totaling \$633,907.77. This figure is after the Treasurer's Office pursues
all nonmanual intervention options available through the banking system. The state
depository banks are able to clear approximately 60 to 70 percent of original state debt
by sending these items for second presentment prior to charging the debt to the state.
These figures in this testimony do not include child support or the Department of
Revenue returned checks, as they have collection staff that manage their debt
independently. This bill would allow the State Treasurer's Office to set up and maintain
a database of remitted payments resulting in returned checks or returned electronic
payments. The database would be utilized to track state agency bad debt statewide,
and prevent future bad debt. The database would track current debt, as well as maintain
records of when debt was cleared, which agency incurred the bad debt, when debt was
written off, and if and when debt was recovered. Notes could be kept regarding the
status of collection actions--for example, when letters were mailed, when phone call

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contact was made, etcetera. This would be up to agencies to determine if they would require individuals who had written or incurred prior bad debt to submit guaranteed funds for future payments. Let me give you an example. The Nebraska Game and Parks Commission is an agency that actively pursues the collection of bad debt items. Their average item in calendar year 2006 was \$55.54. Nebraska Game and Parks attempts to collect bad debt via mail, phone calls, and often turn to local county attorneys for assistance. Although writing a bad check is illegal, due to caseloads and priorities, prosecution in court rarely occurs. Individuals are allowed to take leisurely vacations and hunt and fish all over the state of Nebraska, at our taxpayers' expense, because when the debt is uncollected, you and I, as taxpayers, are paying for the hunting and fishing licenses and vacations when the agency writes the bad debt off. In July of 2006, the state was charged back for 122 Game and Parks returned checks. Forty-five of those returned checks were from 11 individuals. Two of those 11 individuals wrote Nebraska Game and Parks 9 and 16 bad checks individually. This represents only one busy summer month for that agency. By the time the checks are returned to the state from the banks, the payer is long gone. Check scanning and check verification equipment purchased that you often see at retailers, utilizing is expensive, and you pay monthly fees for those services. Agencies do not have the fees to absorb that expense, and it is not feasible for a park that sells a permit at a hut to utilize power. It is our vision that this database would be used as a cooperative effort among state agencies. If you utilize the check scanners, the business entity will not accept your check until you clear up existing previous debt. Why do we, as government, continue to allow individuals to utilize nonessential government services at taxpayer expense. The State Treasurer's ability to collect returned check charges and charges for electronic payments not accepted will allow our office to expand this program and assist agencies in managing their debt more efficiently, and continue to allow the Treasurer's Office to recover these costs incurred by our agency for the processing and handling of bad debt items. State Treasury staff would be able to assist agencies in reducing and managing current bad debt by utilizing the database as a tool to prevent future debt. LB619 is merely a clarifying bill. Currently, agencies strictly interpreting the statute believe that the wording only allows for item...for them to charge a fee equivalent to what the State Treasurer's Office charges the state agencies for a returned check or an electronic payment that is not accepted against the state agency. Agencies strictly interpreting the statute currently are not using the section of the law to assist in recovering their administrative costs. Our office recently completed an analysis utilizing our larger depository financial institution fees to determine approximate costs incurred by the State Treasurer's Office to handle bad debt expense for agencies. The analysis was that the bank charges for bad debt were approximately \$10 per returned item. These fees do not include staff labor expense to handle the items, create the accounting entries, log information, create bill agencies for bad debt, answer phone calls from agencies, banks, and constituents, as well as research time. As you can see from this analysis, the state agencies are not recouping the costs, and we believe that they should be allowed to do so. I believe Game and Parks has provided a letter that they are going to...on record in

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support of this bill. I hope that you have been...I hope I have been able to answer a few of your questions, and if not, I'd be happy to take some questions. [LB618 LB619 LB620]

SENATOR ASHFORD: Thank you. Any questions? Thanks a lot. [LB618 LB619 LB620]

SENATOR SCHIMEK: Over here. [LB618 LB619 LB620]

SENATOR ASHFORD: Oh. [LB618 LB619 LB620]

SENATOR SCHIMEK: Sorry. You know, it just dawned on me that these bills would generally go to Government Committee, which I would say generally has the institutional knowledge to deal with this. I'm not sure this is true anymore. But I'm trying to think back to when we talked about some of these issues before. How many agencies...did you say two agencies that you now...? [LB618 LB619 LB620]

MICHELLE RAPHAEL: Yes, that now allows us to collect their items electronically. [LB618 LB619 LB620]

SENATOR SCHIMEK: What's the second agency? [LB618 LB619 LB620]

MICHELLE RAPHAEL: UNL, University of Nebraska-Lincoln, their Lincoln campus. [LB618 LB619 LB620]

SENATOR SCHIMEK: And when did that happen? [LB618 LB619 LB620]

MICHELLE RAPHAEL: We started that a few years ago. [LB618 LB619 LB620]

SENATOR SCHIMEK: Thank you. [LB618 LB619 LB620]

MICHELLE RAPHAEL: Thank you, Senators. [LB618 LB619 LB620]

SENATOR ASHFORD: How many testifiers do we have on these three bills? Okay. [LB618 LB619 LB620]

TROY REINERS: Thank you, Mr. Chairman and members of the committee. For the record, my name is Troy Reiners, R-e-i-n-e-r-s, and I'm the director of the Nebraska Child Support Payment Center, also known as the State Disbursement Unit, or SDU for short. I'm here today to give you some technical background on bill LB620, and to answer any questions you might have. Just as background, currently the SDU offers two electronic methods of payment to custodial parents in lieu of a warrant. Child support recipients are offered direct deposit to a Visa-branded store value card; or they can receive a direct deposit to a bank account. Direct deposit provides a fast, secure,

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risk-free, and efficient method of distributing support payments. The state can disburse child support funds to a custodial parent via a direct deposit payment to their checking or savings account, or to the Visa-branded free debit card. Payments are sent securely, and funds are immediately available to the child support recipient on date of settlement, which is the next business day following transmission. Card funds can be deposited by the SDU into the recipient's card account, and are accessed exclusively with the card, on the same time schedule as direct deposit to a bank account. The cards are reloadable. The card program offers an alternative way to eliminate issuance of costly child support warrants. Child support cardholders have the convenience and security of a Visa-branded card product. Cards can be used anywhere Visa debit cards are accepted worldwide. The cardholders receive two no-service-charge cash access transactions per month. Statements and cardholder information can be accessed by both a voice response unit and web site at no fee to the cardholder. Direct deposit reduces risk to the custodial parent, as well as to the state of Nebraska. Warrants can be lost, stolen, counterfeited, forged, mishandled by the financial institutions, or credited to the wrong bank account. Direct deposit reduces the number of warrants written, and less warrants written translates into less expense in state government. More than 2.7 million child support direct deposit payments have been disbursed since the inception of the Child Support Payment Center, which was December 2001, representing a program savings of approximately \$1.5 million. This savings represents a difference of 58 cents between the per-transaction payment of ACH, versus warrant issuance. The Child Support Payment Center has issued more than 2.8 million payments by warrant since program inception. The issuance of state child support warrants has cost approximately an addition \$1.5 million in expenses that could have been saved had the program offered only direct deposit to a bank account or cards since program inception. I'd also like to comment on the provision in this bill that would move more employers towards sending in their payments for their employees electronically. Our division is extremely excited about this part of the bill. I have worked with other child support centers around the country and have seen a trend in recent years of more and more states moving this direction. Every payment that comes in electronically moves us closer and closer to more effective, more efficient operation. Currently, we have two outreach people who travel around the state, educating employers on the benefits of moving to electronic payment methods. We have found that the more employers who move this direction, the fewer envelopes we have to open every morning. Although this might not seem like a large savings to some, I am here to tell you it really does make a significant difference in our mail room. Thank you for your time today, and I would be happy to answer any questions you might have. [LB618 LB619 LB620]

SENATOR ASHFORD: Thanks for your testimony. Any questions? Thank you. Proponent? Opponent? Neutral. Oh my. Okay. Any other neutral testifiers? Okay. [LB618 LB619 LB620]

LAURA PETERSON: (See exhibits) Am I the last person? [LB618 LB619 LB620]

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SENATOR ASHFORD: (Laugh) You're the last one. [LB618 LB619 LB620]

LAURA PETERSON: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm legal counsel for the Department of Administrative Services, and I'm the State Risk Manager. I'm appearing today to testify on behalf of the administration in a neutral capacity on LB618 and LB619. I'm actually handing out my testimony. I'm not going to read any of LB619's, but I'll try to mention where the two coincide. LB618 has two primary provisions, one authorizing the State Treasurer's Office to charge administrative fees for bad debts, and the other authorizing the State Treasurer to create a database of those who have written bad checks to the state, and indicating under which circumstance the agencies could mandate a certain form of payment from prior bad debtors. The administration is very interested in the collection of bad debt. We've had discussions with the Treasurer's Office regarding this issue, over a period of time now. We're interested in continuing those discussions, but we believe more details need to be resolved. First, we wonder if a bill is necessary to create a database. The Treasurer's Office already has access to information regarding who is writing bad debts...writing bad checks, or who's issuing bad electronic payments to the state. The Treasurer's Office should be able to provide this information to state agencies from the information that they already have. Second, we are unclear about the potential of this bill to grow the administrative charges associated with bad debt. Currently, the Treasurer's Office charges \$20 to the agency for each bad check. Approximately \$9 or so of that \$20 goes to the Treasurer's Office for their administrative costs of processing that bad debt. Accordingly, the agency passes that cost on to the person who's issuing the bad check, if it is ultimately collected. If the bad debt is never collected, the agency loses the amount of the check, in addition to the \$20 administrative charge. We want to be sure that we're striking the proper balance of collection efforts and fees, because ultimately the fees are passed on to the consumers who were least able to pay in the first place, or to the taxpayers of this state in the form of a write-off. We're requesting that the committee hold this bill. The similar concern for LB619, by the way, is relating to the potential of growing administrative fees related to write-offs or bad debt. We are requesting that the committee hold this bill while we work with you and with the Treasurer's Office to see if we can come up with a solution that addresses their goal, or our joint goal, of collecting as much data as possible, but that does not require legislation, nor require increased administrative fees or state personnel. Thank you, and I'd be happy to answer any question. [LB618 LB619 LB620]

SENATOR ASHFORD: Thanks for getting all the...yeah, Senator La...yeah. [LB618 LB619 LB620]

SENATOR LATHROP: I got one, if I may. You just asked us to hold these three bills? [LB618 LB619 LB620]

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LAURA PETERSON: We aren't taking any position at all on LB620, but LB618 and LB619. [LB618 LB619 LB620]

SENATOR LATHROP: And you read that fast. I appreciate that. [LB618 LB619 LB620]

LAURA PETERSON: (Laugh) Sorry about that. [LB618 LB619 LB620]

SENATOR LATHROP: And what is it that you want to want us to wait for you to do? [LB618 LB619 LB620]

LAURA PETERSON: Well, basically, we've had sort of an ongoing dialogue with the State Treasurer's Office, and we're certainly interested in all solutions that would allow the state to collect more debt. But we're concerned that these bills don't have enough detail in them, and that there may be some things we can work out to do to increase our debt collection without requiring this legislation. [LB618 LB619 LB620]

SENATOR LATHROP: So for the committee's sake, how long do you want us to hold it? What's the time frame you're talking about? [LB618 LB619 LB620]

LAURA PETERSON: Well, I mean, certainly, we want to initiate...reinitiate some of those discussions, and include you in that, and come back. I mean, I'm not sure if we're asking for later in the session, if we think we need something. We also think there may be...we may be able to come up with solutions without needing the legislation at all. [LB618 LB619 LB620]

SENATOR LATHROP: That's between...that's something you want to work out with the Treasurer's Office and then come back to us? [LB618 LB619 LB620]

LAURA PETERSON: And you, to the extent we would need legislation. [LB618 LB619 LB620]

SENATOR LATHROP: Okay. [LB618 LB619 LB620]

SENATOR ASHFORD: And we haven't had those conversations. Well, there...it hasn't been that much time, but we haven't had those conversations yet, so we don't... [LB618 LB619 LB620]

LAURA PETERSON: Well, and it's sort of been an ongoing dialogue, and Senator Schimek alluded to that. There have been a couple of interim studies on bad debt that were joint studies of the Business and Labor Committee and the Government, Military and Veterans Affairs Committee. [LB618 LB619 LB620]

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SENATOR ASHFORD: Okay, so we'll defer to her. She knows a lot about it. It did seem like a...it seemed like a good plan to me. I don't know, but maybe not. We'll see. [LB618 LB619 LB620]

LAURA PETERSON: I think the concern on our part is just that, for example, if you look at the fiscal note, there appears to be an increase in the fees that are associated. And ultimately, the more we increase fees, the more agencies are required to incur that debt, because you can see, you can look at the amount of debt that's ultimately collectible; the ones that aren't collectible, the administrative fee gets tacked on to the agency that originally collected that check. And so there is a concern about sort of striking this balance between going after as much debt as we can, but not unduly burdening those who wrote the check in the first place with administrative fees in the attempt to collect bad debt that may or may not ever be collectible, I think. [LB618 LB619 LB620]

SENATOR ASHFORD: Okay. Any...Senator Pirsch. [LB618 LB619 LB620]

SENATOR PIRSCH: I'd just question,...you said, unduly burdening the person who wrote the check. Wouldn't these just go for actual...the actual cost that would...I mean, isn't that your discretion, to charge the actual cost of what you're out, the manpower, etcetera? [LB618 LB619 LB620]

LAURA PETERSON: I think the concern is that as we add on duties--for example, if we're going to build a database and we're going to require agencies to do some administrative effort to send information to the database or to use the database before they take a check--that the more duties you add on to the debt collection process, the larger that fee or that actual cost gets. And I think there's some concern we have to talk about the balance between what's necessary to adequately protect taxpayer dollars, with not growing and growing those actual costs. [LB618 LB619 LB620]

SENATOR PIRSCH: And you said you've been in talks with the Treasurer's Office thus far, already? [LB618 LB619 LB620]

LAURA PETERSON: With the prior Treasurer's Office. We've had one very brief conversation since the new Treasurer and new Treasurer's staff have taken place. But of course, the timing hasn't been very long. [LB618 LB619 LB620]

SENATOR PIRSCH: How much time do you think you need? [LB618 LB619 LB620]

LAURA PETERSON: That sort of depends on...we'd like to get that done as soon as possible. We're not trying to delay the process at all. But again, bills come up pretty quickly, and so we haven't done that yet. It's hard to tell. [LB618 LB619 LB620]

SENATOR PIRSCH: Would you think in the...though, in the...in terms...and if you know,

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weeks, or months, or possibly... [LB618 LB619 LB620]

SENATOR ASHFORD: Years. (Laughter) [LB618 LB619 LB620]

SENATOR PIRSCH: ...years? [LB618 LB619 LB620]

LAURA PETERSON: I don't think anybody is talking about years. I mean, I think, you know, we'd like you to delay for a little while. And certainly, we'd be actively engaged in a discussion right away, and keeping you informed on that. [LB618 LB619 LB620]

SENATOR PIRSCH: Sure. I'm just trying to get a sense of what does "a little while" mean (inaudible). [LB618 LB619 LB620]

LAURA PETERSON: You know, I mean, it's difficult to know. We need to engage agencies who have a lot of bad debt. There's a lot of data out there about how much is collectible. There's a large percentage of debt that is never going to be collectible by automatic redepositing. I think it's substantially over 50 percent can never be collected that way, anyway. There's a lot of things to work out. We want to do it as quickly as possible. I don't know if it's weeks or months. I certainly don't think it's years. I mean, hopefully, we'd like to engage in this session. [LB618 LB619 LB620]

SENATOR ASHFORD: We're term-limited, you know. (Laughter) So there's...you know, we want to try to get things done within our time. [LB618 LB619 LB620]

_____ : This is our time. [LB618 LB619 LB620]

SENATOR PIRSCH: Well, I thank you for your testimony. [LB618 LB619 LB620]

SENATOR ASHFORD: Thank you. [LB618 LB619 LB620]

SENATOR CHAMBERS: I just have a comment. [LB618 LB619 LB620]

SENATOR ASHFORD: Yeah. [LB618 LB619 LB620]

SENATOR CHAMBERS: Since...I'm always concerned about fees. And since it came...I was going to discuss it just among us, but since it came out and some of it is on the record, I don't want a new system to be subsidized by people who are making payments and those people don't have a lot of money. That's why I would have discussed with the committee what we think the actual cost is, and if they're going to continue to build systems, then we would put a dollar amount limit, so that these people who have to pay this money are not going to have to subsidize a new system. And if the new system is justified, let them try to get General Fund money. And if they cannot persuade the Legislature to fund it, then they won't have that system. But I don't want it to be

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fee-based on these people who may not even have the amount of money necessary to pay what the check is written for. [LB618 LB619 LB620]

LAURA PETERSON: And I think that's our concern, is that we make sure we know the answer to the fees question and the balancing of, we certainly want to collect the debt for the services that we provide, but we don't want to be unduly burdensome, I think. [LB618 LB619 LB620]

SENATOR ASHFORD: Thank you. Senator Pirsch. [LB618 LB619 LB620]

SENATOR PIRSCH: Thank you. I'm going to waive closing here. (Inaudible) appreciate it. Thanks. [LB618 LB619 LB620]

SENATOR ASHFORD: Okay. That concludes the hearing. (See also Exhibit 6, and an unmarked exhibit from Health and Human Services.) [LB618 LB619 LB620]

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Disposition of Bills:

LB137 - Held in committee.
LB152 - Advanced to General File.
LB220 - Held in committee.
LB384 - Held in committee.
LB586 - Advanced to General File, as amended.
LB618 - Held in committee.
LB619 - Advanced to General File, as amended.
LB620 - Advanced to General File, as amended.

Chairperson

Committee Clerk